

POLITICAL DEPORTATIONS IN THE UNITED STATES:

A Study in the Enforcement Procedures: 1919-1952 *

Introduction

October 16, 1918, Congress passed an act¹ providing for the deportation from the United States of non-citizens who were members of or affiliated with organizations seeking to overthrow the government of the United States by force and violence.² The first political deportation act (1903)³ had related solely to "alien anarchists," and had been passed after the assassination of President McKinley in 1901 by an American-born anarchist. During the next two decades the public had been urged to change its social philosophy and economic system by such native-born agitators as Socialist Eugene V. Debs, Wobbly William Haywood, syndicalist William Z. Foster, and naturalized citizen Daniel DeLeon, one of the first American followers of Karl Marx.⁴ It had witnessed the sensational trials of

* Although no cases arising after 1952 are discussed herein, discussion of cases arising prior to 1952 is brought up to the present date.

1. 40 Stat. 1012 (1918), 8 U. S. C. 137.

2. "(g) Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes enumerated in this section, shall, upon the warrant of the Attorney General, be taken into custody and deported * * *. The provisions of this section shall be applicable to the classes of aliens mentioned therein, irrespective of the time of their entry into the United States." The enumerated classes include:

"(a) Aliens who are anarchists—(b) Aliens who advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that advises, advocates, or teaches, opposition to all organized government—(c) Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers * * * of the Government of the United States * * * because of his or their official character, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage—(d) Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly have in their possession for the purpose of circulation, distribution, publication or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating, or teaching * * * [(1), (2), (3) and (4) enumerated above under (c)]—(e) Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (d)."

3. 32 Stat. 1214, 1221 (Mar. 3, 1903).

4. See, for example, Ginger, Ray, *The Bending Cross: A Biography of Eugene Victor Debs* (1949); on Haywood and Industrial Workers of the World, 215-6, 219-20, 234-44; on DeLeon, 96-7, 182-3. Haywood, William D., Bill Haywood's

labor leaders charged with conspiring to use force and violence,⁵ or with the actual use of force and violence;⁶ all of the defendants had been American citizens. Still the belief persisted that radicals were dangerous; that radicals were aliens; that radical ideas had been imported from abroad; that security for this country depended upon the immediate expulsion of radical aliens and their radical ideas. It was this belief which led to the passage of the 1918 act.⁷

The Act made no provisions for administrative hearings to determine whether the particular aliens arrested were in fact "radical" within the definitions of the Act.⁸ Since the courts had ruled that deportation was not a form of punishment,⁹ none of the safeguards available to the defendant in a criminal case were applicable to such aliens. There was no statute of limitations,¹⁰ no

Book (1929); Foster, William Z. *From Bryan to Stalin* (1937).

5. Moyer, Haywood and Pettibone (1906) described in Ginger, op. cit., 244-8, 251-5.

6. J. B. and John J. McNamara (1910) described in Ginger, op. cit., 304-6; Steffens, Lincoln, *The Autobiography of Lincoln Steffens*, 638-89 (1931).

7. The reason for passage of the Act is stated in two 1919 anarchist deportation cases; *ex parte Pettine*, 259 F. 733, 735 (D. C. Mass.), and *Lopez v. Howe*, 259 F. 401. For conflicting views on the history of the Act, see *Strecker v. Kessler*, 95 F. 2d 976, 978 (5th Cir. 1938) and *Kessler v. Strecker*, 307 U. S. 22, 30-1 (1939). In support of Judge Hutcheson's view, see Post, *The Deportations Delirium of Nineteen-Twenty* 63-66 (1923), and I. J. A. Bull. 7 pp. 1-3 (1932). Brief general history given in *Developments in the Law, Immigration and Nationality*, 66 Harv. L. Rev. 643, 644-7, 680. It should be noted in passing that three justices of the Supreme Court (including Justice Field, who wrote the opinion in the *Chinese Exclusion case* (130 U. S. 581)), said that there was no Congressional authority to deport a resident alien, *Fong Yue Ting v. U. S.*, 149 U. S. 698, 733, 743, 756, 760 (1893).

8. See discussion in *Sung v. McGrath*, 339 U. S. 33, at 49 (1950).

9. *Fong Yue Ting v. U. S.*, 149 U. S. 698, 730 (1893); *Johannesen v. U. S.*, 225 U. S. 227, 242 (1912); *Bugajevitz v. Adams*, 228 U. S. 585, 591 (1913); *U. S. ex rel. Bilokumsky v. Tod*, 263 U. S. 149, 154 (1923); all cited with approval in *Harisiades v. Shaughnessy*, 342 U. S. 580, 594 (1952). But see doubts expressed in majority opinion in *Galvan v. Press*, 74 S. Ct. 737, 742 (1954), and in dissents of Black and Douglas, 74 S. Ct. 737, 744.

10. The earlier deportation acts had contained statutes of limitations, see Kasisas, U. S. Immigration, Exclusion and Deportation (2d Edit.) 4 (foreign convicts), 5 (violators of contract labor law), 6 (illegal entrants) (1940). For a comparison with statutes of limitations in various criminal statutes, see "Whom We Shall Welcome", Report of the President's Commission on Immigration and Naturalization 197-8 (1953), (hereafter called "President's Commission Report"). The doctrine of laches does not apply in deportation proceedings: *Restivo v. Clark*, 90 F. 2d 847; but cf. *Petition for Naturalization of John Wasowski*, #306755, N. D. Ill. (March 18, 1946) (Barnes, J.) in which naturalization was granted despite deportation warrant outstanding since 1919. (VI Law. Guild Rev. 559 (1946).)

prohibition of ex post facto laws¹¹ or bills of attainder¹² or guilt by association¹³ or double jeopardy,¹⁴ no requirement of open hearings before an impartial government official¹⁵ or of proof beyond a reasonable doubt,¹⁶ no right to counsel guaranteed at all stages of the proceedings¹⁷ or to purchase a transcript of hearings for use on appeal,¹⁸ no method of appeal to the courts for full judicial review of the proceedings and deportation orders.¹⁹

This political deportation act has remained basically unchanged in the intervening 35 years. Some sections have been altered by Congress in order to specifically overrule decisions by the courts favorable to deportees.²⁰

11. See *Harisiades v. Shaughnessy*, 342 U. S. 580, 593 (1952), and dissent of Mr. Justice Douglas, 598-601.

12. See brief of petitioner, *Quattrone v. Nicholls* (not yet rep.) (#53-4SMC, Mass., decided Feb. 19, 1953.)

13. The Board of Immigration Appeals held that it had not been proved that *Peter Harisiades* personally advocated any proscribed doctrines (see note 152, infra). The U. S. Supreme Court upheld his deportation solely on the ground of his past membership in an organization (the Communist Party) which was found to advocate proscribed doctrines (*Harisiades v. Shaughnessy*, 342 U. S. 580 (1952)), and no courts have reached a contrary decision since.

14. The classic case of repeated arrests and hearings and determinations of deportability on political grounds is that of *Harry Renton Bridges* (see note 26 and 52 Yale L. Jour. 2 (1942) and *Bridges et al. v. U. S.*, 73 S. Ct. 1055 (1953)). Other non-citizens who were re-arrested for deportation after winning their first deportation cases were: *Frank Boric*, *Joseph Strecker*, *Fred Fierstein*, *Jack Schneider*, *Stella Petrosky*. (See Appendices B and C.) See discussion of res judicata issue by Board of Immigration Appeals in its decision in the *Harry R. Bridges* case, 52, note 77 (1942).

15. See description by Dean James M. Landis of the innovations instituted in the first deportation hearings involving *Harry R. Bridges* (1939), In the Matter of *Harry R. Bridges*, Findings and Conclusions of the Trial Examiner 2-3, 4; see discussion of exemption of deportation hearings from provisions of Administrative Procedure Act, note 24.

16. E.g., *U. S. ex rel. Tisi v. Tod*, 264 U. S. 131 (1924); *Fajtauer v. Commrs.*, 273 U. S. 103 (1927).

17. See *Colyer v. Skeffington* for quotations from the rules in force prior to the 1919-1920 mass arrests, and immediately thereafter. (265 F. 17, 46-7 (1920).)

18. See letter from Carol Weiss King, Esq., to Commr. of Immigration at Ellis Island, May 10, 1926 and reply May 12, 1926. King files, New York.

19. The only method of attacking deportation orders in the courts has traditionally been by habeas corpus petitions. (*Kabadian v. Doak*, 65 F. 2d 202, cert. denied *Kowal et al. v. Perkins*, 290 U. S. 661 (1933).) After passage of the Administrative Procedure Act in 1946, attempts were made to apply Sec. 1009 (providing for judicial review of administrative decisions) to deportation orders. (*U. S. ex rel. Lindenau v. Watkins*, 73 F. Supp. 216 (S. D. N. Y. 1947); *U. S. ex rel. Trinler v. Carusi*, 166 F. 2d 457 (3d Cir. 1948); *Francia et al. v. Shaughnessy* (unrep.) (Civ. #63-260, S. D. N. Y. May 29, 1951) (Leibell, J.)). In *Heikkila v. Barber*, 345 U. S. 229 (1953), the Supreme Court held this provision of the A. P. A. inapplicable to deportation orders under the 1917 Act, restating the rule that the only method of attack is by habeas corpus proceedings. In *Rubinstein v. Brownell* (206 F. 2d 449, aff'd 74 S. Ct. ...) the court concluded that injunctive review of deportation proceedings is available under the Immigration Act of 1952. All of the cases studied in this article were tested by habeas corpus except for *Coleman*, *Heikkila* and *Mascitti*, cited in Appendix C.

20. E.g., the 1940 amendment to the Act provided for deportation for past membership in a proscribed organization (54

These statutory changes have consistently limited the burden of proof on the Immigration Service.²¹ The Rules promulgated by the Service guarantee the right to counsel throughout the proceedings²² and counsel are permitted to use transcripts of hearings,²³ but the Rules do not bring deportation hearings within the standards required in all other types of administrative hearings.²⁴

From the beginning the law has been applied to non-citizen members and affiliates of the Communist Party, whether or not such membership had ceased at the time of the deportation arrest.²⁵ No exhaustive proof of the character of that party has been produced

Stat. 673, 8 U. S. C. 137) immediately after the Supreme Court had held that past membership was not covered in the 1918 Act. (*Kessler v. Strecker*, 307 U. S. 22 (1939).) In 1948 Judge Goldsborough in the District Court for the District of Columbia ruled that the Service was bound by the Administrative Procedure Act (60 Stat. 239, 241, 5 U. S. C. 1001, 1006-7) in *Eisler et al. v. Clark*, 77 F. Supp. 610. The Service immediately asked Congress for exempting legislation. No action was taken at the time, but in 1950, after the Supreme Court upheld this view in *Sung v. McGrath* (339 U. S. 33), Congress exempted the Service from most of the provisions of the A. P. A. in a rider to the Emergency Appropriations Act (64 Stat. 1048 (Sept. 1950)).

21. Until 1933 the Bureau of Immigration was in the Department of Labor. The name was changed in that year to the Immigration and Naturalization Service but the Labor Department continued its authority until 1940, when the Service was transferred to the Department of Justice, where it has remained. Hereafter referred to as the Immigration Service or the Service.

In 1930 the 9th Circuit Court of Appeals, in *ex parte Fierstein*, (41 F. 2d 53) refused to take judicial notice of the character of the Communist Party and held that the evidence presented by the Service on this point did not satisfy its burden of proof. The case was sent back for further hearings on this issue. (No such hearings were held until Fierstein was re-arrested in new proceedings in 1946.) Thereafter, in 1932, Cong. Dies proposed an amendment to the 1918 Act providing for deportation for membership in the Communist Party, named in the amendment. (H.R. 12044, 72nd Cong. 1st sess.) This amendment, and a similar one (H.R. 7120, 74th Cong., 1st sess. 1935) were defeated. In 1950 this provision became sec. 22 (1)(C) of the Internal Security Act of 1950 (P.L. 831, Chapter 1024, 81st Cong., 2d sess.), and is found at sec. 241(a)(6)(C) of the Immigration Act of 1952 (66 Stat. 163), hereafter sometimes referred to as the Walter-McCarran Act. The constitutionality of this provision was upheld in *Galvan v. Press*, 74 S. Ct. 737 (1954).

22. Rule 242.53(g), Federal Register, Dec. 19, 1952, p. 11514-5.

23. Information of the authors.

24. The rider to the 1950 Appropriations Act exempting the Service from provisions of the A. P. A. (note 20) was made permanent in the 1952 Immigration Act (8 U. S. C. 155a). The Rules of the Service as to the conduct of hearings in deportation cases do not satisfy the following requirements of the A. P. A., among others; separation of investigative, prosecuting and deciding officers; selection of impartial special inquiry officers through use of rotating lists. In a recent non-political deportation case (*Anthony Pino*), counsel complained that the Special Inquiry Officer, who acted as prosecuting and deciding officer, refused "to furnish counsel with the contents of his dossier on the Pino case". The Boston Daily Globe, Mar. 6, 1953. Other procedural complaints have arisen out of the failure of Congress to require the Service to comply with the A. P. A.

25. Deportation for past membership was ordered in the following cases and upheld in court reviews: *U. S. ex rel. Mannisto v. Reimer*, 77 F. 2d 1021 (2d Cir. 1935), *U. S. ex*

in the deportation hearings.²⁶ The courts have not reviewed the findings of the Service when they were based on "any" evidence or when the denial of due process was not "flagrant".²⁷

The result of a negative decision by the agency and the courts is an order of deportation. The considerations which might be decisive in the sentencing of a defendant in a criminal case are inapplicable here: the number of years since the deportee emigrated from his birthplace, the number of dependents he leaves in this country,²⁸ his age, the number of years since his alleged proscribed activity was concluded, the extent of his activities as a member or affiliate of a proscribed organization, his ability to prove good moral character, his desire to become an American citizen, or even his military service in the U. S. Armed Services. Yet deportation is a form of penalty, although not technically considered "punishment".²⁹ The courts have repeatedly expressed their belief that it may result "in loss of both property and life; or of all that makes life worth living".³⁰ This is particularly clear in cases

rel. Yokinen v. Commr., 57 F. 2d 707 (2d Cir. 1932). However, see case of *John Pappas*, in which the Service cancelled the warrant of arrest on evidence that alien was past member of Communist Party who had joined solely as agent for the local Industrial Association. VI I. J. A. Bull. 102 (1938). And see *Strecker case*, discussed in note 20.

For a list of deportation cases involving Communist Party membership, see Findings and Conclusions of Trial Examiner James M. Landis in the Matter of Harry R. Bridges, note 18, pp. 6-7 (1939).

26. Secretary of Labor Wilson ruled in 1920, in the case of *Engelbert Preis*, that membership in the Communist Party was grounds for deportation under the 1918 Act. (Quoted in full in *Colyer v. Skeffington*, 265 F. 17, 55-7, note 4.) See note 21 above. The two major exceptions involved cases where considerable testimony was taken by the Service and the deportees as to the character of that party: the first and second hearings in the *Bridges* case and the *Harisiades* case. See Transcript of Landis hearing, beginning on pages 4343 and 4566 (1939), and Memorandum of Decision by Charles B. Sears, Presiding Inspector, in the Matter of Harry Renton Bridges, File #55973/217, 22-30 (1941), and Transcript in the Case of Peter Harisiades, File #99183/146, pp. 1-598 of hearings (Oct. 1946 to Jan. 1947). For discussion of the character of the Communist Party by the Supreme Court, see opinion of Justice Murphy in *Schneiderman v. U. S.*, 320 U. S. 118, 149-156 (1943) (denaturalization case); but cf. *Harisiades v. Shaughnessy*, 342 U. S. 580 (1952) and *Galvan v. Press*, 74 S. Ct. 737 (1954).

27. *U. S. ex rel. Tisi v. Tod*, 264 U. S. 131 (1924); *Vajtauer v. Commrs.*, 273 U. S. 103 (1927).

28. The deportation law was amended in 1940, after years of agitation by Immigration officials and others, to provide for suspension of deportation when such banishment from this country would result in economic hardship to American-citizen wives and children of deportees who could prove good moral character. This provision did not apply in political cases until passage of the 1952 Immigration Act (Sec. 244(a)(4)). But see discussion in President's Commission Report, 211-15 (1953) of Congressional intention to grant suspension in only a small fraction of cases, and *U. S. ex rel. Accardi v. Shaughnessy*, 74 S. Ct. 499 (1954), (a non-political case.)

29. See note 9, *supra*.

30. Brandeis, J. in *Ng Fung Ho v. White*, 259 U. S. 276, 284 (1922); similar expressions in *U. S. ex rel. Klonis v. Davis*, 13 F. 2d 630 (2d Cir. 1926); *Wallis v. Tecchio*, 65 F. 2d 250, 252 (5th Cir. 1933); *Di Pasquale v. Karnuth*, 158 F. 2d 878,

in which the non-citizen came to this country at such an early age that he never learned his "native" tongue, and in other cases in which his birthplace is now part of a different country than when he emigrated. (And the Immigration Act of 1952³¹ expressly provides that a non-citizen can be deported to any country which will accept him for permanent residence, whether or not he has ever lived or even visited there in the past.³²)

It has been clear from its inception that the political deportation law may need revision, and certainly needs scrutiny. Congressional hearings were held concerning the 5,000 to 6,000 political deportation arrests made under orders of Attorney General A. Mitchell Palmer in November 1919 and January 1920,³³ and the subsequent decisions by Assistant Secretary of Labor Louis F. Post in cases based on those arrests.³⁴ A leading segment of the Bar likewise concerned itself with the deportation enforcement procedures in that period.³⁵ In 1931 President Hoover appointed the National Commission on Law Observance and Enforcement (Wickersham Commission), which made a report on "The Enforcement of the Deportation Laws of the United States" and recommended changes in the law and procedures.³⁶ The Committee on Ellis Island, appointed by Secretary of Labor Perkins, likewise proposed changes in its 1934 Report.³⁷ Shortly before the Immigration Service was transferred to the Department of Justice in 1940, and again after the transfer, studies were made of unfair administrative procedures followed in governmental agencies, including the Serv-

879 (2d Cir. 1947); James Madison, 4 Elliott Debates on the Federal Constitution 555 (1798). See attitude of Asst. Secy. of Labor Post, op. cit. 253-55 (1923). In *Barber v. Gonzales*, 74 S. Ct. (1954), Mr. Chief Justice Warren reiterated this view for the majority: "Although not penal in character, deportation statutes as a practical matter may inflict 'the equivalent of banishment or exile,' * * * and should be strictly construed."

31. 66 Stat. 163 (1952).

32. Sec. 243(a)(7). E.g., *Anna Taffler*, undeportable to the country where she was born, was ordered by the Immigration Service in May, 1954 to apply for permission to enter Israel, because she is of the Jewish faith, although she has never lived in Israel. (See citation in Appendix C.)

33. See Appendix A, notes 1 and 2.

34. *Ibid.*, note 3.

35. *Ibid.*, note 6. Among the attorneys who handled deportation cases arising out of the Palmer Raids in 1919-1920 (some of whom later testified before Congressional committees) were: Benjamin C. Bachrach, Chicago; Charles A. Karch, E. St. Louis; John Lord O'Brian, Buffalo; Charles Recht, Swinburne Hale, Walter Nelles, Isaac Shorr, New York City; F. E. Steelwagen and Fred M. Butzel (later Michigan Supreme Court Justice), Detroit; ex-Sen. Hardwick (later Governor of Georgia).

36. For a list of studies and articles growing out of the Wickersham Report, see Oppenheimer, Recent Developments in the Deportation Process, 36 Mich. L. Rev. 355, 357 (1938).

37. Particularly as to administrative procedures. See Report of the Ellis Island Committee 7 (1934), quoted in Oppenheimer, op. cit. 36 Mich. L. Rev. 355, 381.

ice.³⁸ Extensive Congressional hearings were held in 1951 prior to passage of the Immigration Act of 1952. After its passage, but before its effective date, President Truman appointed a Commission on Immigration and Naturalization³⁹ to sound out public opinion and report on the wisdom of enforcing this Act. The Commission's report was published January 1, 1953, one week after the Act went into operation, and contains many recommendations for changing the handling of political deportation cases.⁴⁰ President Eisenhower indicated in April, 1953⁴¹ that many sections of the Act need further study, including the section on political deportations.

But the only one of these studies which was actually based upon the records of the Immigration Service was the report of the Wickersham Commission of 1931, prepared by Reuben Oppenheimer of the Baltimore Bar.⁴² The other reports were based on oral testimony of interested persons and supported by cases chosen as examples of particular abuses. While they were all carefully prepared, their conclusions are not subject to statistical verification. Research in this field is difficult. This can be indicated most easily in connection with a description of the steps in the usual political deportation case arising between 1919 and 1952: The non-citizen was arrested by means of a warrant and a hearing was held before a hearing officer of the Immigration Service to determine whether the charges contained in the warrant were true. The transcript of this hearing was not made available to the public. On the contrary, the attorney for the deportee obtained his copy from the Service, which required him to agree not to show the transcript to any other person (including another attorney) and to return the transcript to the Service upon the conclusion

of the case.⁴³ The decision of the hearing officer was not made public, and the file in the case was closed to all except the attorney of record in the case. If the decision of the hearing officer was adverse, the deportee could appeal to the Board of Immigration Appeals. But until 1947 the decisions of this Board were likewise not published.⁴⁴ Since 1947,⁴⁵ the Service has published three volumes of administrative decisions in immigration cases, starting with August 1940 (when the Service was transferred from the Department of Labor to the Department of Justice⁴⁶ and when the Board of Immigration Appeals was established). But there has been no indication that decisions of its predecessor, Board of Review, made prior to August 1940 will ever be printed. The situation is the same as to decisions by the Attorney General on appeals from adverse rulings of the B. I. A. At this point the deportee could test the validity of the deportation order in the courts, but only by means of an ancillary attack by petition for writ of habeas corpus.⁴⁷ Very often the decisions of the Federal District Courts were unreported,⁴⁸ and the decisions of the Courts of Appeals were frequently mere memoranda affirming the order of the lower court.⁴⁹ The Supreme Court denied certiorari in several political deportation cases and actually heard and decided only eight political deportation cases in the period covered, 1919-1952.⁵⁰

43. Information of the authors. See agreements regularly attached to transcripts to be signed by attorneys in deportation cases.

44. Except for the findings and conclusions of the hearing officers in the first and second deportation hearings re *Harry Bridges*, which were published by the Service. See note 26.

45. The volumes were published "pursuant to the requirement of Section 3(b) of the Administrative Procedure Act", and entitled "Administrative Decisions under Immigration & Nationality Laws", see Vol. I, p. III. (1947).

46. Reorganization Plan No. V, transmitted to Congress May 22, 1940 by Pres. Roosevelt.

47. Statistics on court tests in Wickersham Report 111-12, and Oppenheimer, op. cit., 36, Mich. L. Rev. 358. See Appendix A for 5 court tests of deportation orders in 1920; Appendix B for 30 court tests (out of 53 cases studied) in 1930-1937 period; Appendix C for 10 court tests (out of 219 cases studied) in 1944-52 period; (other cases cited related to granting of bail or other issues). See note 19 re new method of review of deportation orders.

48. See Appendix C for numerous examples of unreported cases.

49. E.g., *U. S. ex rel. Ferrer v. Commr.*, District Court decision unreported, 86 F. 2d 1021 (Memo.), cert. denied 300 U. S. 653, (1937), and *Ujich v. Commr.*, District Court decision unreported, 75 F. 2d 1022 (Memo.), cert. denied 295 U. S. 746 (1935).

50. The eight cases heard by the Court were: *Bilckumsky v. Tod*, 263 U. S. 149 (1923), *Mahler et al. v. Eby*, 264 U. S. 32 (1924), *Tisi v. Tod*, 264 U. S. 131 (1924), *Menserich v. Tod*, 264 U. S. 134 (1924), *Vajtauer v. Commrs.*, 273 U. S. 103 (1927), *Kessler v. Strecker*, 307 U. S. 22 (1939), *Bridges v. Wixon*, 326 U. S. 135 (1945), *Harisiades v. Shaughnessy*, 342 U. S. 580 (1952). Cert. was granted in *U. S. ex rel. Boric v. Marshall*, 290 U. S. 623 (1933) but the case was not argued because the Service offered to cancel the warrant of arrest if the alien would withdraw his petition for certiorari, which was done, (290 U. S. 709). Cert. was also granted in *Martinez v.*

38. See *Sung v. McGrath*, 339 U. S. 33, 36-45 (1950) for a brief history of the studies which led to passage of Administrative Procedure Act, and President's Commission Report 155-58, for a short summary of the findings of the Dimock Committee, and other studies. See also statement of Ralph T. Seward, Chairman, Board of Review, Department of Labor in Proceedings, 4th Annual Conference, American Committee for Protection of Foreign Born, March 1940, 42-5. Report on the Immigration and Naturalization Systems of the United States by the Senate Committee on the Judiciary (Apr. 20, 1950) (91st Cong., 2d Sess., Rep. 1515) served as the basis for much of the 1950 Internal Security Act and the subsequent 1952 Immigration Act. See pp. 781-801 for discussion of "Subversives", "Communism as an Alien Force" and "The Law".

39. Executive Order 10392 (Sept. 4, 1952).

40. President's Commission Report 226, 228, 231, 266.

41. Letter from Pres. Eisenhower to Sen. Arthur V. Watkins, dated April 6, 1953, quoted in NYTimes April 28, 1952, pp. 1 and 21.

42. Oppenheimer studied every 20th (later every 50th) case in chronological order in the files of the Immigration Bureau (then in the Labor Department) from July 1, 1928 to June 20, 1929, a total of 453 cases involving 496 persons. Wickersham Report 29.

In unreported cases and cases which never reached the courts, counsel for the deportees are the only source of information open to persons outside the Immigration Service.

The difficulty of obtaining information does not, however, eliminate the necessity for evaluating the enforcement of the political deportation act of 1918. It is the purpose of this article to consider this question in three parts: a) To what extent, and in what sense, have the persons arrested for deportation on political grounds been "aliens"? b) To what extent, and in what sense, have they been shown to be persons who sought to overthrow the United States government by force and violence? c) What proportion of the persons arrested for deportation on these grounds have actually been expelled from the United States?

The answers to these questions have been sought through study of political deportation cases in three periods: 1919-1920, 1930-1937, 1944-1952. The first period was chosen for study because it involved the first large-scale application of the 1918 Act and the number of arrests was larger than in the entire period since 1920;⁵¹ some of the methods used by the Immigration Bureau and the Justice Department at that time were continued in the second and third periods, and there is considerable material available about the period from semi-official sources⁵² and a few court cases.⁵³

Nelly, 73 S. Ct. 39 (1953), but the Court split 4-4, 1 not voting, so the decision of the 7th Cir. was upheld without opinion. *Heikkila v. Barber* was decided in the spring of 1953 (73 S. Ct. 603); *Galvan v. Press* was decided May, 1954 (74 S. Ct. 737).

51. Approximately 5,000 to 6,000 political deportation arrests were made in 1919-1920. It is impossible for anyone outside the Immigration Service to determine the exact number of political deportation arrests made since that time. Appendix D shows that 930 political deportees have been expelled from this country between 1921 and 1952. Since the Immigration Bureau did not engage in large-scale mass arrests after 1919-1920, it seems likely that no more than two or three times this number of persons were arrested in this period, or around 3,000. The figure 375 post-World War II cases seems to include almost all of the arrests made (see Appendix C, note 1). The total arrests from 1921 to 1952 therefore would probably not exceed 3,300 or 3,500.

52. See Appendix A.

53. One of the reasons that so few of the cases in this period were appealed to the courts was the rules which Asst. Secretary of Labor Post established for deciding the cases which came before him: (1) No deportations to be ordered on basis of evidence procured illegally, such as admissions of aliens when not warned of their rights, when not permitted to consult counsel, when held illegally without warrants of arrest, or when exhibits were seized without warrants. (Post, op. cit. 185, 216.) (2) No deportations to be ordered for membership in proscribed organization when aliens were not aware of the nature of the organization. (Post, 179-80). (3) No deportations to be ordered for membership in proscribed organization when membership was concluded before passage of Act of 1918 making such membership a ground for deportation. (Post, 175). (4) No deportations ordered for past membership in proscribed organization when withdrawal was not due to desire to escape deportation or to serve group

Relatively few political deportation cases arose between 1922 and 1930,⁵⁴ but 244 arose between 1930 and 1937, at the end of the Hoover administration and the beginning of the New Deal. Information was available to the authors in fifty-three of these cases: thirty cases were appealed to the courts⁵⁵ and in the others the attorneys wrote up the facts.⁵⁶ While this sample is small (less than 22% of the cases which ended in deportation), it includes all of the cases cited by the various courts in their opinions in political deportation matters and it seems plausible to generalize on certain limited aspects of the cases in which the data is almost uniform.

The post-World War II period similarly followed years (1939-44) in which very few political deportation cases arose.⁵⁷ 219 cases from 1944-1952 were studied. This is a large enough proportion of the total political deportation cases in the period (375)⁵⁸ to provide a reliable sample. Since the majority of the cases are still pending, and many of them (sixty-seven) have been before the courts at least once,⁵⁹ it was possible to obtain more detailed information about the individual cases than in the other two periods. This additional material for the third period is included as an aid in reaching accurate answers to the questions posed, even though similar information was not available for the earlier periods.

* * *

secretly, but in good faith. (Post, 181, 185). (5) Discretionary relief to apply in political cases: Post decided all doubts in favor of deportees who had dependent wives or children who were U. S. citizens, and Secretary of Labor Wilson ordered that no aliens should be deported on the S.S. Buford who had wives or children in U. S. (Post, 187, 5). (6) No deportations to be ordered to countries where aliens would be subjected to physical persecution if this fact was common knowledge, e.g., Post ordered that Emma Goldman and Alexander Berkman, well-known anarchists, should be deported to "Red" Russia and not "White" Russia, and prevented the deportation of one Magon to Mexico for the same reason. (Post, 18, 21, 169-71).

The cases which went to the Supreme Court (*Bilokumsky*, *Mahler*, *Tisi*, *Mensevich* and *Vajtauer*, cited in note 50) all arose after the abuses complained of in *Colyer v. Skeffington* (265 F. 17 (1920)) had largely ended and the Immigration Bureau and Department of Labor had returned to their customary procedures and rules.

54. See Appendix D for number of political deportations effected each year from 1908 to 1952.

55. Cited in Appendix B; Oppenheimer gave these reasons for "small proportion of court proceedings": "absence of counsel, * * * lack of funds, and * * * realization of limited scope of judicial review." Wickersham Report 111-12 (1931).

56. In the Bulletin of the International Juridical Association, published monthly between May 1932 and December 1942.

57. See Appendix D.

58. The figure 375 was arrived at as follows: the Immigration Service listed 292 political deportation cases pending in December, 1951 (see Appendix C, note 1). The authors studied 144 of these cases, plus 75 cases not listed by the Service. 292 cases plus 75 gives a total of 367 cases.

59. See citations in Appendix C.

I. To what extent, and in what sense, have the persons arrested for deportation on political grounds been "aliens"?

A. The legal definition of "alien".

The 1918 political deportation act relates solely to "aliens". An "alien" is, by legal definition, "one born out of the jurisdiction of the United States and who has not been naturalized under their Constitution and laws".⁶⁰ Were the persons arrested in the three periods studied "aliens" within this definition?

1. 1919-1920:

The Immigration Bureau of the Labor Department was charged with the sole responsibility for enforcing the deportation laws at this time.⁶¹ It issued approximately 600 warrants of arrest under the 1918 Act in the fall of 1919. On November 7, 1919, agents of the Justice Department conducted raids in eleven cities on buildings containing offices of the Federation of Unions of Russian Workers, and executed approximately 452 of the warrants on this date. In most instances everyone in the building was arrested and all were taken to the Justice Department offices where they were questioned by agents of that Department. Those who could prove that they were citizens were immediately released; non-citizens were then turned over to the Immigration Bureau of the Labor Department.⁶² After the warrants were matched-up with the persons arrested, telegraphic warrants were applied for and issued in Washington for the remaining deportees.

On the night of January 2, 1920 between 2,500 and 5,000 arrests were made in thirty-three cities. The procedure was similar to the earlier raids: everyone who had been arrested was questioned by Justice Department agents; citizens were released and non-citizens turned over to Immigration officials. Approximately 6,000 warrants had been issued by the Labor Department, presumably all relating to non-citizens. But the arrests were carried out by seizing everyone in entire buildings where foreign-language or Communist meetings were in progress in some rooms, and little or no effort was made to separate citizens from non-citizens or to arrest solely by delivering warrants to individual aliens.⁶³

⁶⁰ From Kent's Commentaries 50, as quoted in Baldwin's Student Edition of Bouvier's Law Dictionary 64 (1940).

⁶¹ *Colyer v. Skeffington*, 265 F. 17, 28 (1920).

⁶² Post, op. cit. 34-5, quoting from NYTimes Nov. 9, 1919; Report upon the Illegal Practices of the United States Department of Justice, (National Popular Government League, Washington, D. C., May 1920) 11. (Hereafter cited as Report on Illegal Practices).

⁶³ Report on Illegal Practices 4; testimony of Sedar Serschuk before Judge Anderson in *Colyer v. Skeffington*: "When

Of the 5 to 6,000 persons arrested in this manner, between 1500 and 1800 were released immediately and were therefore never turned over to the Immigration Bureau or served with warrants of arrest for deportation.⁶⁴ Two categories of persons were released: citizens (or, more particularly, citizens who could prove their status) and non-citizens who clearly did not come within the purview of the 1918 Act. In view of the breadth of the Justice Department definition of an "alien radical",⁶⁵ it is not likely that many of those released immediately came in the second category. It is also clear that a few citizens were turned over to the Immigration Bureau by mistake, and, by similar mistake, incarcerated in various detention centers set up to hold the thousands arrested.⁶⁶

In this period, then, approximately 30% of those arrested in the course of the enforcement of the 1918 Act were in fact citizens to whom the Act had no application and over whom the Immigration Bureau of the Labor Department had no jurisdiction. (The Justice Department had no jurisdiction over these citizens since their arrests were under a statute involving the Labor Department alone; nor did the Justice Department have any jurisdiction over the 3500 to 4500 non-citizens similarly arrested.)

2. 1930-1937:

The Immigration Bureau of the Department of Labor made a number of arrests in this period by means of raids resembling, in some respects, the two large Palmer Raids. For example, in 1931 twenty policemen and twenty-five Immigration inspectors of the Seattle District entered a meeting of the Communist Party at its headquarters. Everyone present was examined as to his citizenship status and five persons were taken to the U. S. Detention station, where they were examined, held overnight, examined again, and then held awaiting telegraphic warrants issued two days later in Washington. Thereafter deportation hearings were held.⁶⁷ Three other deportees (of the group studied) were arrested under

the agent of the Department of Justice began to search his room, he said to them: 'If you want to arrest me, show me your warrant. He showed me his list, and said, "This is your warrant," and continued to search the room.' (265 F. 17, 75).

⁶⁴ Statistics were compiled from: Post's own records (Post, op. cit. 27, 155, 159, 166-7, 187, 192); Post's presentation of the relevant sections of the Annual Report, Commissioner General of Immigration 1919-1920 (Post 166-7); A. C. L. U., "Since the Buford Sailed" 3, 13. For summaries by areas, see Post: New York, 107; New Jersey, 109; Pittsburgh, 115; Buffalo, 116-19; Portland, 124-5; Chicago, 129; Detroit, 144, 146.

⁶⁵ *Colyer v. Skeffington*, 265 F. 17, 48-9 (1920).

⁶⁶ See testimony taken in *Colyer* case as abstracted in Report on Illegal Practices 55 (1920).

⁶⁷ *Wolck v. Wecdin*, 58 F. 2d 928 (9th Cir. 1932).

similar circumstances,⁶⁸ and information is available concerning raids by Immigration officials in Chicago in August, 1932, involving fifty persons arrested without warrants, at Unemployed Council and Communist Party meetings, including five citizens.⁶⁹

After a change in the national administration, in the spring of 1933, three citizens were arrested for deportation in connection with trade union organizing work,⁷⁰ and fifty-one seamen were arrested for resisting eviction from the YMCA where they were living, of whom fifteen were held, without warrants, for deportation. Altogether eighty-two arrests for political deportation were made between March and September, 1933. Of this number thirty-nine were released because they were citizens.⁷¹

The customary procedure, however, was to question a group of persons at their gathering place and then arrest only the non-citizens for deportation. All of the fifty-three political deportees studied in this period were non-citizens.

3. 1944-1952:

The Immigration and Naturalization Service of the Department of Justice made approximately 375 arrests for deportation on political grounds in this period. In all of the 219 cases studied the deportees were "aliens" by legal definition (or the Justice Department presented evidence to refute claims of citizenship made in a few cases). It is doubtful that any of the persons arrested in this period under the 1918 Act were clearly citizens.

B. The sociological concept of "alien".

There is, in addition to the legal definition of an "alien", a sociological concept involved. The writings of Holmes,⁷² Brandeis,⁷³ Pound⁷⁴ and others have

made clear to modern legal scholars that such concepts cannot be ignored if the law is to serve the ends of justice. This is particularly true in a field such as deportation for political beliefs, in which the purpose sought to be accomplished is the protection of American citizens from that which is foreign. In this view, the extent to which a deportee is not sociologically an "alien" should properly affect the decision as to his deportability.

Webster's New World Dictionary of the American Language (1951) defines the word "alien" as "belonging to another country or people; foreign; strange." In addition to the legal meaning, discussed above, it continues: "a foreigner", "an outsider", as "alien to, strange to; not natural to; not in harmony with." Under this definition a person would cease to be an alien after he had lived in a country for a number of years, learned its language, studied in its schools or worked in its industries, built a family of citizens and given up ties with the "old country".

President Truman's Commission recommended that:

"Alien members or affiliates of subversive organizations who were lawfully admitted to the United States for permanent residence prior to reaching the age of 16 years, or who were lawfully admitted for permanent residence and have resided in the United States continuously for at least 20 years, should not be subject to deportation, but should be dealt with in the same manner as subversive citizens."⁷⁵

The rationale behind this recommendation is stated in explicitly sociological terms:

Aliens who are present members of proscribed organizations "should be deported except where they entered the United States at an early age or have been residents for such a long period of time as to have become the responsibility of the United States."⁷⁶

The Italian government recently expressed its agreement with this view when it issued orders to agents at its borders to turn back all undesirable immigrants from the United States, specifically including persons born in Italy who came to the United States, became citizens here, then were denaturalized and deported back to Italy. Implicit in this decision is the feeling that these people came to America at an early age, entered into criminal activities here and are now the

68. *Anderson, Ohm, Vilarino*, citations in Appendix B.

69. I I J. A. Bull. 5, p. 1 (1932). August 12, 1932, in White Plains, New York, a citizen was tried for unlawful assembly, (speaking without a permit at an Unemployed Council open air meeting.) Before the case was heard, the judge ordered the courtroom cleared. As spectators filed out, they were surrounded by police and 42 were arrested, taken to police headquarters and there questioned by Labor Department officials. 12 were unable to produce citizenship papers or other satisfactory evidence of their right to remain in the U. S. and were immediately sent to Ellis Island. (I I J. A. Bull. 4, p. 3 (1932).)

70. *June Croll*, in Providence, R. I., while working with National Textile Workers Union; *Max Garfunkel* in Pittsburgh, Pa.; *Cross Mischief* in Detroit in connection with Briggs auto strike. II I. J. A. Bull. 4, p. 8 (1933).

71. *Ibid.*; see also Wickersham Report 55-6 (1931).

72. Particularly "The Common Law" 1-2, 35, 36 ("The life of the law has not been logic; it has been experience..."); and dissents in *Vegeahn v. Guntner*, 167 Mass. 92, 104 (1896), *Lochner v. N. Y.*, 198 U. S. 45, 74 (1905), and *Truax v. Corrigan*, 257 U. S. 312, 342 (1921).

73. For example, dissent in *Truax v. Corrigan*, 257 U. S. 312, 354 at 354-5 (1921).

74. "The Scope and Purpose of Sociological Jurisprudence", 24 Harv. L. Rev. 591 (1910-11), 25 Harv. L. Rev. 140 and 489 (1911-12).

75. President's Commission Report 226.

76. *Ibid.* 266 and see discussion of "Wrongdoers Produced by our Society" at 201-2.

responsibility of the American, not the Italian, government. Members of parliament have expressed "mounting resentment" at the idea of using Italy as "a penal colony for America."⁷⁷ While this ruling was limited to persons who had gained American citizenship and then been denaturalized and deported, the underlying theory is equally applicable to those with long residence in the United States who never became citizens.

Assuming the validity of this sociological factor, it is worthwhile to examine the extent to which the political deportees in the three periods were "aliens" and the extent to which they had become Americanized while remaining non-citizens. Study of cases in the three periods provided specific information on: deportees' length of residence in U. S. at the time of arrest, their family status, and the number who had applied for American citizenship.

1. 1919-1920:

No statistical material is available as to the non-citizens arrested for deportation during the Palmer Raids. However, a tentative portrait of these deportees can be pieced together from statements by Judge Anderson (who heard extensive testimony in the *Colyer* case⁷⁸ in the spring of 1920), Assistant Secretary of Labor Louis F. Post⁷⁹ (who decided approximately 4,000 cases for the Labor Department during this period), and affidavits of some of those arrested (collected by the committee of twelve lawyers⁸⁰).

Thomas Truss⁸¹ was characterized by Post as a typical non-citizen arrested in the Raids. He was slightly over thirty years of age, a resident of the United States for twelve or thirteen years, married, with three American-born children. He was a coat-presser by occupation and a leader in his labor union and church; a man of good reputation in his community. He was a national of Poland, although a large number of those arrested were Russian.

Family status: One indication of the family responsibilities of the persons arrested can be found in connection with the first Raid. 184 persons arrested on November 7, 1919 were deported on the *S.S. Buford* just before Christmas, 1919, on such short notice that they were not able to settle all their affairs. Secretary of Labor Wilson had ordered that no married persons were to be deported on the *Buford*, but this order was

not obeyed at the Ellis Island station. Post noted that over half the group did leave families in this country.⁸²

Number of deportees who had applied for U. S. citizenship: It is doubtful that many of the non-citizens arrested in this period had sought American citizenship or had served in the American Army in World War I, although no information is available on either point.

Integration into American community: Relatively few of those who sought relief in the courts were well-acquainted with the English language, and many of the deportation hearings required the use of interpreters.⁸³ The extent to which the deportees had become integrated into the American communities in which they lived is unknown.

2. 1930-1937:

TABLE 1
LENGTH OF RESIDENCE IN U. S. OF 53 POLITICAL
DEPORTEES: 1930-1937⁸⁴

No. of years in U. S. when arrested	No. of deportees cumulative
Over 21 years	9
Over 11 years	20
10 years or less.....	12
Total known	32
Total not known.....	21
Total studied	53

Under the recommendations of the President's Commission,⁸⁵ nine of the thirty-two (28%) would not have been subject to deportation proceedings, because they had become the responsibility of this government through their long (21-year) residence here. They would have been treated like citizens and prosecuted for any violations of the criminal law.

Family status: At least ten of the group of fifty-three were married, and at least two of these had American-citizen wives. Nine of the group had children. (The cases included fifty-one men and two women, one of whom was the sole support of her eight children.⁸⁶)

82. After the *Buford* had been at sea for several days, these 100 deportees requested permission to dispose of their property in this country by signing powers of attorney to be sent to their families here, which was granted. An inference that at least some of the deportees had been working steadily in this country may be drawn from the fact that the 100 men thus released \$45,470.39 in wages due, bank accounts, Liberty Bonds, and so forth. Post, op. cit., 5, 6. (1923).

83. *Colyer v. Skeffington*, 265 F. 17, 74 (1920).

84. Based on cases cited in Appendix B.

85. Quoted supra, p. 99.

86. *Stella Petroskey*, IV I. J. A. Bull. 4, p. 7 (1935); re-arrested for deportation in August, 1953.

77. The Boston Daily Globe, Jan. 1, 1953, p. 1.

78. *Colyer v. Skeffington*, 265 F. 17 (1920).

79. Author of "The Deportations Delirium of Nineteen-Twenty", subtitled "A personal narrative of an historic official experience" (1923).

80. See Appendix A, item (6).

81. Post, op. cit. 206. Truss was arrested by means of a ruse and held incommunicado for one day, then held a week before being released on bail (207).

Number of fifty-three deportees who had applied for citizenship: One non-citizen was arrested for deportation after he voluntarily stated to a naturalization inspector that he had been a member of the Communist Party for four months in 1932.⁸⁷ Nothing is known about citizenship applications made by the other deportees.

Integration into American community: Even assuming that all of the deportees for whom facts are not known had resided here less than ten years, 38% of the group studied had lived in this country ten years or more. 17% had lived here over twenty-one years. While mere residence does not prove integration or the loss of foreign ties, this fact becomes significant in connection with the types of activities in which the deportees were engaged. (See Tables 3 and 6.) The unemployed councils, trade union organizing drives and strikes, demonstrations against Hitler's government in Germany and Mussolini's in Italy—all these activities of the early 1930s were largely led by native-born Americans, and the majority of the participants were likewise citizens. The fact that twenty-four or more of the fifty-three studied also participated in these activities might lead to the conclusion that they were more, rather than less, integrated into the life of America at that time.

3. 1944-1952:

TABLE 2

LENGTH OF RESIDENCE IN U. S. OF 219 POLITICAL DEPORTEES: 1944-1952⁸⁸

No. of years in U. S. in Jan., 1952 ⁸⁹	Cumulative	
	No.	%
Over 41 years	35	18
Over 31 years	125	63
Over 21 years	190	96
Over 10 years	194	98
Under 10 years ⁹⁰	4	2
Total known	198	100
Total not known...	21	
Total studied	219	

Sixty-eight out of 195 of the deportees arrived here before they reached sixteen years of age (35%), and almost two-thirds lived here during the Palmer Raids and continuously thereafter.

Under the recommendation of the President's Commission, quoted above, 96% of the deportees for whom facts are available would not be subject to deportation because resident here for more than twenty years.

87. Joseph Strecker, *Kessler v. Strecker*, 307 U. S. 22 (1939).

88. Based on cases cited in Appendix C.

89. Or as of date of conclusion of case (through deportation, voluntary departure, cancellation of warrant, or death.)

and 35% would be undeportable on the additional ground of arriving here prior to their sixteenth birthdays.

Family status: 185 men and thirty-four women comprised the group studied. Half of these deportees were married, including sixty-nine married to citizens. 101 are parents of citizen-children and twenty-four have sons who fought in World War II or are currently in the Armed Services. At least twenty-one are grandparents and two or more are great-grandparents of American citizens. Of the thirty-four women deportees, twenty-seven are married and two are widows. Sixteen are married to citizen-husbands and seventeen have citizen-children. There are six couples in which both husband and wife have been arrested for deportation.⁹¹

Number of 219 deportees who had applied for citizenship: At least eighty-three had applied for citizenship one or more times (46% of the 181 for whom facts are available), and fifty-one such applications were pending at the time of the arrests.⁹² At least five of the eighty-three were arrested on the basis of voluntary admissions they made when being interviewed by Immigration agents concerning their citizenship applications, and this is probably a low figure.⁹³ Although five of the 219 deportees served in the U. S. Armed Forces in World War II, only one⁹⁴ was able to take advantage of the provisions for naturalization of non-citizen soldiers;⁹⁵ his deportation warrant was cancelled following his naturalization.

90. This figure includes *Gerhardt* and *Hilde Eisler*, who never intended to come to or remain in the U. S. but were interned (because of their nationality) on their way to Mexico when World War II began.

91. In several instances the husbands and wives are subject to deportation to different countries.

92. One had been naturalized and denaturalized in 1941; 2 had been recommended for citizenship by the Service, but these recommendations were later withdrawn and warrants for deportation were substituted; 1 arrived in U. S. in 1906, became naturalized, lost citizenship when married to an alien prior to 1924; 1 was permitted by the Service to adjust his status so that he could become naturalized. For an illuminating discussion of the tactics of naturalization examiners, see *Petition of F.*, 73 F. Supp. 655 (S. D. N. Y. 1947), a non-political case.

93. These 5 instances are all known to the authors personally. The number of non-citizens, active in political or trade union affairs, who applied for citizenship decreased during periods in which courts upheld deportation for political belief (1930's), and as a result of political questions asked of aliens under 1940 Alien Registration Act (otherwise known as the Smith Act), and the continued deportation actions against Harry Bridges. During World War II many applications for citizenship were made by this group, probably influenced in part by the decision of the Supreme Court in *Schneiderman v. U. S.*, 320 U. S. 118 (1943).

94. *Harry Bersin*.

95. See Sec. 328, Immigration Act of 1952 for current provisions.

Integration into American community: It is clear that the majority of the deportees studied actively opposed deportation; a number stated specifically at their deportation hearings that they considered this country their home and that they had no ties whatever with their countries of birth.⁹⁶ Some twenty-one were officers in local or international trade unions at the time of their arrests, mainly in elective positions, and stated this fact as proof of their acceptance by their fellow-Americans.⁹⁷ In less than 4% of the cases did townspeople testify against the deportees at any stage of the proceedings,⁹⁸ and in several cases favorable testimony was given by citizen-friends and acquaintances.

II. To what extent, and in what sense, have political deportees been shown to be persons who sought to overthrow the United States government by force and violence?

The government charged political deportees with seeking the violent overthrow of the U. S. government. The political activities of the deportees at the time of their arrests serve as one indication of the validity of this charge. The dates and character of the deportees' actual political activity are more significant and can be ascertained from transcripts of deportation hearings and material brought to the attention of the courts when writs of habeas corpus were applied for (following denial of bail by the government). Some further pertinent information is presented concerning the extent of the criminal records of the deportees, their age and sex (in connection with their ability to actively further the overthrow of the government), and the number who served honorably in the U. S. Armed Forces.

A. The political activities of deportees at the time of their arrest.

1. 1919-1920:

In the spring of 1919 three groups of bombs were found in the U. S. Mails, addressed to leading government officials, including Attorney General A. Mitchell

96. See, e.g., statement of *Benny Saltzman* at conclusion of his deportation hearing (files of the late C. King, Esq., New York) and editorial of N. Y. Post, "Cruel and Inhuman", concerning his case, Jan. 26, 1951.

97. *Karl Latva* is a member of the auxiliary police force in his small community; *Martin Karasek* received commendatory letters from his local AFL union and the chief of police in his town, indicating that he is "an old resident, and has spent most of his life here." The vicar-general of the archdiocese of Portland, a city councilman and the president of the Intl. Woodworkers of America-CIO testified in the deportation hearing of *John Fougrouse* as to his good character, etc.

98. E.g., in the case of *Otto Skog*, A 4-519-994, the hostile testimony of a former friend was given no credence by the Board of Immigration Appeals in its opinion Jan. 5, 1952, and the deportation warrant was cancelled.

Palmer.⁹⁹ In the late summer of 1919, following the Russian Revolution, the Socialist Party of the United States split into three groups: Socialist, Communist and Communist Labor parties.¹⁰⁰ In the fall of 1919 the Department of Justice received a deficiency appropriation to deal with the enforcement of criminal laws against bomb-throwers,¹⁰¹ and it participated in discussions with officials of the Labor Department concerning the arrest for deportation of "alien radicals".¹⁰²

As recounted above, on November 7, 1919 and January 2, 1920, Justice Department agents conducted raids in close to fifty cities. The majority of arrests were made at meeting halls housing the Federation of Unions of Russian Workers or the Socialist or Communist parties. Everyone in the buildings was arrested, so that all the musicians in a professional orchestra playing at a dance in the Socialist headquarters in Detroit were arrested, along with a man eating dinner in the cooperative restaurant there.¹⁰³ Many of the people arrested were attending classes in English or other non-political subjects. The Justice Department agents made no effort at the time of the arrests to ascertain what was being said by speakers in the various clubrooms, what motions were being discussed, etc. All rooms were searched, literature carted away, typewriters and furniture smashed and ruined. No munitions or firearms were found.¹⁰⁴ None of the literature seized was later introduced as evidence against individual deportees and none of the deportees were ever implicated in the bomb plots, which remained unsolved.¹⁰⁵

A minority of the arrests were made individually, at the homes of the deportees. In no instance were these people arrested while in the course of illegal conduct.

2. 1930-1937:

Some arrests in this period were made by means of small raids of meeting halls. The majority were made individually, although they were usually made in the course of mass arrests of citizens and non-citizens demonstrating on issues unrelated to citizenship status. Demonstrations were held involving both citizens and non-citizens demanding more relief, higher wages, unemployment insurance, etc. Arrests were made at the demonstrations and the arrested persons taken to police headquarters. The citizens were frequently released

99. Post, op. cit., 34-46.

100. *Colyer v. Skeffington*, 265 F. 17, 50 (1920); *Ginger*, op. cit. 394-5 (1949).

101. Post, op. cit., 51.

102. Ibid., 56-7.

103. Ibid., 138.

104. Ibid., 33; Report on Illegal Practice 16-21.

105. Post, op. cit., 33, 305.

or charged with violating city ordinances,¹⁰⁶ disturbing the peace, etc. The non-citizens were then questioned by Immigration agents and some were arrested for deportation.¹⁰⁷ (Supra, p. 98.)

TABLE 3

CIRCUMSTANCES OF ARRESTS IN 53 POLITICAL DEPORTATION CASES: 1930-1937

Arrested during strikes or union organizing drives, inc. 3 during W. Coast longshore and seamen's strike, 1934	12
Arrested during demonstrations or organization of unemployed, inc. Washington Bonus March, 1932	6
Arrested in anti-Nazi and anti-Fascist demonstrations	3
Arrested in mass protest demonstration of Intl. Labor Defense	1
Arrested in raids on Communist Party headquarters ¹⁰⁸	4
Arrested in connection with Communist Party activity	11
Arrested after making voluntary statement of past membership in Communist Party to Naturalization inspector	1
Arrested after renting space to anarchist publication	2
Total known	40
Total not known	13
Total studied ¹⁰⁹	53

106. Anti-leaflet ordinances, speaking without a permit, etc.

107. Ohm was arrested by New York City police in 1934 while participating, along with others, in a mass protest demonstration sponsored by the International Labor Defense. After his arrest he was questioned by the city police concerning his alienage and membership in the Communist Party and was then turned over to Immigration officials. (*U. S. ex rel. Ohm v. Perkins*, 79 F. 2d 533 (2d Cir. 1935).) Anderson was arrested during a Communist demonstration on the streets of San Francisco and similarly questioned and turned over to the Immigration Bureau. (*Anderson v. U. S.*, 44 F. 2d 953 (9th Cir. 1930).)

At the height of the longshoremen's strike in San Francisco in 1934 (which became a general strike), Secretary of Labor Frances Perkins, replying to Governor Merriam, telegraphed her willingness to cooperate with state officials to rid the state of alien radicals. In fact several persons were arrested for deportation at that time and it is out of these circumstances that the *Harry Bridges* deportation case began. (See note 14.) III I. J. A. Bull. 2, p. 8 (1934).

108. One of the four was the janitor at the Communist Party headquarters, who was arrested when Labor Department agents were looking for someone else. (*Tom Andanoff*).

109. Figures are available concerning the circumstances of 77 political deportation arrests between March and September, 1933 (in addition to the 53 cases studied):

- 9 arrested during strikes and picketing by unions
- 55 arrested in raids on meetings, halls, etc.
- 1 arrested at New York City meeting on Scottsboro case
- 4 arrested in connection with Ford Hunger March and demonstrations at relief stations
- 2 arrested for membership in T.U.U.L. unions (see note 136)

3. 1944-1952:

During the second World War, arrests for deportation on political grounds virtually ceased,¹¹⁰ but they began soon after V-J Day and have continued to the present. These arrests occurred against an international and internal background not unlike that at the time of the Palmer Raids. But the character of the arrests was totally different in the two periods. Although the Immigration Service has publicized plans for arresting several thousand aliens for deportation on political grounds,¹¹¹ the actual arrests which took place from 1944 to 1952 probably did not exceed 375.¹¹²

In this period naturalized citizens and non-citizens were questioned about their own activities and the activities of friends and acquaintances in their nationality groups. A few persons became witnesses in deportation cases as a semi-permanent occupation.¹¹³ Meetings of fraternal groups were kept under surveillance, as well as meetings of committees to defend deportees.¹¹⁴ Arrests were made individually at the non-citizens' places of employment or at their homes. The people arrested were evidently selected for action some time before the arrests took place. This dis-

6 arrested for membership in Communist Party or participation in May Day celebrations.

Of this number 39 were released because they were citizens and 1 was released because insufficient evidence was produced at his deportation hearings. (II I. J. A. Bull. 4, p. 8 (1933).)

Other arrests for deportation in connection with strike activity occurred in Vermont and Rockland, Me. (Granite Workers Union); New York City (Commodore Hotel employees); El Monte, California (berry pickers); Paterson, N. J. (Food Workers Industrial Union). II I. J. A. Bull. 4, p. 8 (1933). In 1935 Frank Bellagatta was arrested without a warrant when he went to call upon a friend held at Ellis Island. III I. J. A. Bull. 10, p. 5 (1935).

110. See Appendix D.

111. See, e.g., statement of Attorney General Herbert Brownell Jr. to Society of the Friendly Sons of St. Patrick that 12,000 alien radicals are being investigated as a prelude to deportation proceedings, and 10,000 naturalized citizens are being investigated preparatory to denaturalization and deportation proceedings. (Boston Daily Globe, March 18, 1953). But compare NYTimes story of April 27, 1953 that "Deportation Drive Now Focused on 38", "Racketeer and Red 'Big Shots' Head List as Brownell Spurs Action of Predecessor".

112. See note 58.

113. E.g., John Leech was a witness in the first *Bridges* case. Dean Landis characterized him at length (Findings and Conclusions of the Trial Examiner 42, 43, 75-6, 41, 47) as one whose word under oath was not believable. Since that time (1939) he has testified in the following deportation hearings, among others: *Carlisle, Cryan, Lukman, Sassieff, Kohler, and Sterenson* (all in Appendix C). (Information from attorneys for deportees.) Charles Baxter has also testified in innumerable deportation hearings and became an advisor on Communist affairs to the Service office in Cleveland. Among the cases in which he appeared as a government witness: *Lukas, Schlossberg, Ganley, Jaffa, Callow, Rogash, Jones, Saltzman, Gottesman* (all in Appendix C). For other examples of government witnesses, see King and Ginger, *The McCarran Act and the Immigration Laws*, XI Law. Guild Rev. 128, 136 (1951), and controversy concerning credibility of government witness Paul Crouch, NYTimes July 9, 1954.

tinguishes this period from the other two. And it permitted the Justice Department to decide in advance the circumstances under which the arrests were to be made. None of the deportees in this period were arrested while engaged in illegal activity, and only a handful were arrested while engaged in political activity of any kind.

TABLE 4

ARRESTS BY YEARS IN 219 POLITICAL DEPORTATION CASES: 1944-1952

1944.....	4
1945.....	1
1946.....	9
1947.....	16
1948.....	45
1949.....	50
1950.....	26 plus 48 re-arrests ¹¹⁵
1951.....	43 plus 39 re-arrests

Years of arrest not known	194 plus 87 re-arrests
	25

Total cases studied	219
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The majority of the deportees were arrested years after they had admittedly ceased political activity (see Tables 7 and 8, *infra*), and in only a handful of cases did the Immigration Service indicate any specific actions of the deportees which led to their arrests (or rearrests).¹¹⁶

B. The dates and character of political activity of political deportees.

1. 1919-1920:

Louis F. Post, Assistant Secretary of Labor from 1913 to 1921, was given the job of deciding the bulk of the cases arising from the Palmer Raids. He reviewed the facts presented at the deportation hearings in order to determine the extent to which the deportees had sought to overthrow the U. S. Government by

force and violence, under the 1918 Act. He began this assignment on March 5, 1920. By June 30, 1920, he had decided between 3,700 and 4,000 cases.¹¹⁷ Under previous decisions by the Secretary of Labor, Post automatically ordered deported all who were members of the Communist Party at the time of their arrest and knew that they were members of that party.¹¹⁸ In nearly every case in which he ordered deportation "the record disclosed nothing but some variety of proof of mere technical membership in one or another organization which the Secretary of Labor had held to be within the proscription of the alien deportation laws. And in most of those cases it was apparent that the alien had neither suspicion nor cause for suspicion that the organization was unlawful".¹¹⁹ Of the 500 to 700 whom he ordered deported, at most "forty or fifty * * * were shown, either by confession or proof to have been advocates of or believers in violent methods of governmental change".¹²⁰ Concerning deportation for affiliation rather than personal belief, he said, "Except for the membership clauses of the deportation laws there could hardly have been, out of the thousands of aliens charged with deportable offenses, more than a canoe load of deportees".¹²¹

Post chose the case of Thomas Truss as typical of those in which he cancelled the warrant of arrest. "In the record of his hearing there was no evidence of any unlawful conduct, declaration or opinion, except membership in the Communist Party. His deportation hinged, therefore, solely upon the question of membership. * * * Mr. Truss had authorized a Communist Party organizer to sign an application for membership in his behalf. But this occurred several weeks before the Communist Party adopted the manifesto which outlawed its alien members. The organization itself did not exist. * * * The alien's understanding at the time of authorizing his application for membership * * * was * * * that he was about to join an organization for socializing mines, railroads, etc., and thereby lowering prices as the Government postoffice had lowered postage. Following his application for membership in the prospective Communist Party, Truss associated friends with him in the city of his residence to form a branch of the still non-existent Communist Party. Upon the actual organization of that party, this inchoate branch received a charter from it. But the branch postponed acceptance of the charter pending receipt of a copy of the constitution of the main body

114. In his decision in *Colyer v. Skeffington* (265 F. 17, at 26), Judge Anderson quoted from 3 May's, *Constitutional History of England* (Am. ed., vol. 2) as follows: "Next in importance to personal freedom is immunity from suspicions, and jealous observation. Men may be without restraints upon their liberty; they may pass to and fro at pleasure; but if their steps are tracked by spies and informers, their words noted down for crimination, their associates watched as conspirators, who shall say that they are free? Nothing is more revolting to Englishmen than the espionage which forms part of the administrative system of continental despotism. It haunts men like an evil genius, chills their gaiety, restrains their wit, casts a shadow over their friendships, and blights their domestic hearth. The freedom of a country may be measured by its immunity from this baleful agency. Rulers who distrust their own people must govern in a spirit of absolutism, and suspected subjects will be ever sensible of their bondage."

115. Discussed *infra*, pp. 120-21.

116. See King and Ginger, *op. cit.*, XI Law. Guild Rev. 131-2, notes 32, 34 and 35.

117. Post, *op. cit.*, 187.

118. *Ibid.*, 179-82.

119. *Ibid.*, 201.

120. *Ibid.*, 252.

121. *Ibid.*, 311.

or the appearance of an organizer to explain the purpose and methods of the organization. As neither constitution nor organizer came, the branch dissolved and returned the charter—all in complete ignorance of the unlawful declarations of the general organization".¹²²

Judge Anderson's conclusions, from the testimony he heard in the *Colyer* case, were very similar to Post's. " * * * from 800 to 1,200 people were arrested in New England and several hundred afterwards incarcerated on Deer Island in Boston Harbor. The charge was that the persons thus lawlessly seized were engaged in a Red or Communistic plot to overthrow our form of government. After most of them were, for utter lack of evidence, discharged, habeas corpus proceedings were brought in this court in behalf of 20, most of whom had been held subject to deportation. In all but 4 of the cases tried it was found by this court that the proceedings lacked due process of law".¹²³ In these four cases the Judge found that the deportees were consciously members of the Communist Party and understood its principles. He characterized three as "harmless English Socialists" and the fourth, Lew Bender, as a "Russian, difficult to understand".¹²⁴ In the cases in which Judge Anderson released the deportees he found that the majority had fled Czarist Russia and were working in this country at wages inconceivable to them before their arrival. He could not credit the Government's claim that they wanted to overthrow the system which was increasing their standards of living so markedly,¹²⁵ nor could he believe that they understood English well enough to comprehend the language used in the constitution of the Communist Party or other documents introduced by the Government.¹²⁶ It was his conclusion that the Communist Party itself did not seek the overthrow of the U. S. Government by illegal means within the definition of the 1918 Act;¹²⁷ he was reversed on this by the Circuit Court.¹²⁸

In at least one case the Immigration Bureau recognized that the alien was not dangerous to the community. Daniel Rakics applied for a writ of habeas corpus to test the order of deportation against him. The Circuit Court of Appeals in New York affirmed the order¹²⁹ because "some" evidence had been presented by the Government bringing him within the

statute. Later the Labor Department cancelled the warrant of arrest.¹³⁰

TABLE 5
CHARACTER OF PROSCRIBED POLITICAL ACTIVITIES OF
1,159 ALIENS ORDERED DEPORTED: 1919-1920¹³¹

	Number	Percent
Ordered deported on basis of personal belief in anarchy.....	83	7.
Ordered deported for present membership in Communist Party	530	45.
Ordered deported for membership in Russ. Workers Fed'n.....	246	21.
Total ordered deported.....	859	73.
Deportation warrants finally cancelled because based on membership in Communist Labor Party	300	26
Total for whom facts available among those ordered deported at some stage in the proceedings	1,159	100.

2. 1930-1937:

Of the forty-four political deportees in this period for whom facts were available, over half were charged with present membership in the Communist Party and 84% were charged with current membership, affiliation or belief in proscribed organizations or doctrines. 9% were charged with past membership. These figures must, of course, be read in the light of the status and activities of that party in the 1930s. As Dean James M. Landis ruled in the 1939 *Bridges* case:

" * * * it is a question of fact whether the Communist Party of the United States of America as of a particular time falls within the statutory ban of advising, advocating, or teaching the overthrow by force and violence of the Government of the United States. * * * That many decisions of Federal courts have sustained previous findings of the Department of Labor that the Communist Party * * * is within that ban, though persuasive, especially when based upon essentially similar evidence, is not conclusive of the question at the present time (citing cases). Not only is there the possibility that the characteristics and objectives of the Communist Party * * * have changed, but it is possible, in the light of changing economic and political conditions, to view the type of radical advocacy indulged in by that party as now so indefinitely related to force

122. *Ibid.*, 205-6.

123. *Petition of Brooks*, 5 F. 2d 238, 239 (1925).

124. *Ibid.*, 239 and *Colyer v. Skeffington*, 265 F. 17, 69-70.

125. *Colyer v. Skeffington*, at 50-1.

126. *Ibid.*, 71.

127. *Ibid.*, 58-61.

128. *Skeffington v. Katzeff*, 277 F. 129 (1st Cir. 1922).

129. *U. S. ex rel. Rakics v. Uhl*, 266 F. 646 (1920).

130. VI I. J. A. Bull. 101 (1938).

131. See note 64.

or violence as to cast doubt upon its appropriate inclusion within the ban of the statute. * * *. Constant re-examination of the theses and aims of such radical organizations is thus under the statute the responsibility of the Secretary of Labor."¹³²

Landis decided that to be "energetically radical"¹³³ and to support many changes in the economic and social systems of this country did not bring an alien within the ban of the 1918 Act. He did not decide whether membership in the Communist Party was adequate grounds for deportation, and the Supreme Court didn't reach this question in the *Strecker* case,¹³⁴ although the lower courts had split on the issue.¹³⁵

TABLE 6

CHARACTER OF PROSCRIBED POLITICAL ACTIVITY OF 53 DEPORTEES (AS CHARGED BY THE GOVERNMENT): 1930-1937

Character and dates	No.	%
Present membership in Communist Party	25	57.
Present affiliation with Communist Party	6	14.
Present membership in T.U.U.L. unions ¹³⁶	3	7.
Present anarchist beliefs and/or membership in anarchist group	2	4.
Past membership in Communist Party including 1 expelled	4	9.
Personal belief in violent overthrow	1	2.
Illegal entry into the U. S.	1	2.
Conviction of two crimes involving moral turpitude	2	4.
Total known	44	100.
Total not known	9	
Total studied	53	

Table 3, above, setting forth the circumstances of the arrests of the fifty-three deportees studied, gives

¹³². Landis, op. cit. 6-7. For Supreme Court decisions at this time on the "characteristics and objectives" of the Communist Party, see *Herndon v. Lowry*, 301 U. S. 242 (1937) and *DeJonge v. Oregon*, 299 U. S. 353 (1937).

¹³³. Landis, op. cit. 133.

¹³⁴. *Kessler v. Strecker*, 307 U. S. 22 (1939).

¹³⁵. *Strecker v. Kessler*, 90 F. 2d 1021 (8th Cir. 1937), 95 F. 2d 976 (5th Cir. 1938).

¹³⁶. Trade Union Unity League. In *Murdoch v. Clark*, 53 F. 2d 155 (1st Cir. 1931), the deportation order was affirmed for membership in the T.U.U.L. with the comment by the court that the deportee had been engaged for several years "in organizing mass groups of labor in opposition to the American Federation of Labor, and in conducting or advising in labor strikes." In 1934, upon the advice of the then Solicitor of the Labor Department, (now Judge) Charles E. Wyzanski, Jr., the Department changed its policy concerning membership in the T.U.U.L. and ruled that it was not a ground for deportation. (Landis, op. cit. 7, note 19).

independent proof that the majority were currently engaged in political or trade union activity. Thirty-seven out of forty for whom facts are available were involved in strikes or demonstrations.

Three of the deportees had been arrested under the state criminal syndicalism statute in 1922 after the Communist Party national convention in Michigan. They were never tried and in 1934, when the state charges were dropped, deportation warrants were also cancelled. The fourth deportee charged with past membership was arrested after publicity concerning his expulsion from the party. One non-citizen was arrested for deportation while awaiting trial on a criminal case arising out of a strike; his deportation warrant was later cancelled. Another was arrested for deportation after serving a short sentence for violence at a city council meeting discussing unemployment problems. A father and son were arrested for deportation after the father became a witness to an assault which occurred at a 1936 Communist Party election rally. One deportee was arrested for criminal syndicalism after he had been ordered deported, and another was arrested for deportation after he had been acquitted in a criminal syndicalism case.¹³⁷

Undoubtedly the majority of political deportees of this period were "energetically radical" at the time of their arrests, and participated in many of the current protest movements. But while several freely admitted membership in the Communist Party, this admission alone did not bring them within the 1918 Act, since several courts at this time refused to take judicial notice of the character of the Communist Party,¹³⁸ nor was membership proscribed by statute.¹³⁹ In at least nine cases which went to the courts the deportees had testified at length concerning their political beliefs and activities at their deportation hearings, and in at least three other cases the government had presented evidence of the personal beliefs of the deportees.¹⁴⁰ In the majority of Communist Party membership cases the government relied on proof of the character of that party and not on proof of the personal advocacy of force or violence by the individual deportees.

¹³⁷. Names of non-citizens given in the order in which their cases are mentioned: *Bacr*, *Popoff*, *Bail-Szak-Tallentire*, *Newman*, *Scovio*, *Panagopolous*, *Warnick*. (Citations in Appendix B.)

¹³⁸. E.g., *Ex parte Fierstein*, 41 F. 2d 53 (9th Cir. 1930).

¹³⁹. See note 21.

¹⁴⁰. In *U. S. ex rel. Ohm v. Perkins* (79 F. 2d 333, 2d Cir. 1935), the policeman who examined Ohm immediately after his arrest testified at the deportation hearing that Ohm had admitted Communist Party membership to him. In *U. S. ex rel. Fernando v. Commrs.* (65 F. 2d 593, 2d Cir. 1933), the court ruled that it was competent for the hearing officer to receive hearsay testimony concerning the political beliefs and affiliations of the deportee.

3. 1944-1952:

In 1941 the United States Supreme Court applied First Amendment guarantees equally to non-citizens and citizens.¹⁴¹ The charges against political deportees since that date provide an interesting test of the application of this rule.

Until the first indictments of Communist Party leaders under the Smith Act¹⁴² in 1948, no citizens were punished solely for being active Communist Party members. To date, no citizens have been punished for past membership in that party. In Smith Act cases the courts do not take judicial notice of the character of that party, and the individual defendants must be shown to be connected with illegal activities of that party.¹⁴³ To date, no members of that party have been tried for mere membership; only leaders of the party have been arrested.¹⁴⁴ While it is true that the Supreme Court ruled in 1951 that certain activities of the twelve leaders of the party between 1945 and 1948 were not protected by the First Amendment,¹⁴⁵ it is equally clear that non-citizens had no foreknowledge of this decision. The 1943 Supreme Court ruling in the *Schneiderman* denaturalization case¹⁴⁶ had been widely publicized among foreign-born Americans and had not prepared them for the *Dennis* decision. It wasn't until May, 1954 that the Supreme Court upheld the constitutionality of the provisions of the 1950 McCarran Act making membership in the Communist Party grounds for deportation, without regard to the dates of such membership or the degree of activity of the individual, and without the necessity of proving the illegal character of that party at the time of membership.¹⁴⁷

Facts concerning the charges against the deportees were available in one-third of the cases studied, including all of the cases of well-known Communists charged with current membership.¹⁴⁸

141. *Bridges v. California*, 314 U. S. 252 (1941).

142. *Dennis v. U. S.*, 341 U. S. 494 (1951).

143. See directed verdicts of not guilty as to defendants Simon Gerson and Isadore Begun in Smith Act trial of *U. S. v. Flynn, et al.* before Judge Dimock (S. D. N. Y. spring, 1953).

144. The twelve Communist Party leaders (*Dennis, et al.*) were also indicted for membership in the party, but have not yet been tried on that count. Lightfoot was indicted solely for membership in that party, spring 1954, in Chicago.

145. *Dennis v. U. S.*, 341 U. S. 494 (1951).

146. *Schneiderman v. U. S.*, 320 U. S. 118 (1943). But cf. Justice Jackson's discussion in *Harisiades v. Shaughnessy*, 342 U. S. 580, 593-4 (1952).

147. *Galvan v. Press*, 74 S. Ct. 737. In his dissent, Justice Black described the situation as follows: "For joining a lawful political group years ago—an act which he had no possible reason to believe would subject him to the slightest penalty—petitioner now" * * * faces deportation. (74 S. Ct. 737, 744).

148. The facts for Table 7 were taken mainly from court opinions reviewing denials of bail by the Service at the time of arrests and re-arrests of deportees. Assuming that the more

TABLE 7

CHARACTER OF PROSCRIBED POLITICAL ACTIVITY OF DEPORTEES (AS CHARGED BY THE GOVERNMENT): 1944-1952

Character and dates	No.	%
Present membership in Communist Party	15	19.
Present affiliation with Communist Party	1 *	1.*
Present membership in I.W.O. ¹⁴⁹	4 *	5.*
Government failed to prove Communist Party membership	2	2.5
Alien denied charge; dates of Government allegation not known	2	2.5
Past membership in Communist Party in another country, before entry into U. S.	5 *	6.*
Past membership in U. S. Communist Party	51	64.
Total known	80	100.

* These figures are accurate for the entire group of 219 cases.

President Truman's Commission recommended that proceedings for deportation not brought within ten years of the proscribed activity should be barred.¹⁵⁰ If this recommendation were adopted, thirty-five of the fifty-one persons charged solely with past membership in the Communist Party would be released from deportation warrants. If the prohibition against ex

"active" deportees were re-arrested and denied bail. (see instructions re October 1950 arrests mentioned in note 250 infra), these figures would probably be over-weighted in terms of charges of present membership in the Communist Party.

149. International Workers Order. To date no criminal penalties have attached to citizens who joined the I.W.O., a fraternal insurance organization. In 1943 the Commissioner of Immigration, Earl G. Harrison, in a letter to American Committee for Protection of Foreign Born, stated that I.W.O. membership was not a basis for denial of naturalization. (*The Lamp*, Feb. 1946, p. 3). In a 1945 case, the Service recommended that citizenship be granted to Anthony Goncharevich but at the same time submitted data from the files of the Dies UnAmerican Activities Committee concerning the I.W.O. of which Goncharevich had been a member. (*The Lamp*, Feb. 1946, p. 3). The 1st Circuit Court of Appeals declined to take judicial notice of the character of the I.W.O. on the basis of the Dies Committee material in *Stasiukerich v. Nicolls*, 168 F. 2d 474 (1948). For current status of I.W.O., see *I.W.O. v. McGrath (Joint Anti-Fascist Refugee Comm. v. McGrath)*, 341 U. S. 123 (1951), and charges of Department of Justice heard before Subversive Activities Control Board under McCarran Internal Security Act of 1950, sec. 7. But cf. decision of Board of Immigration Appeals granting suspension of deportation to *Clara Dainoff*, a long-time but inactive member of I.W.O. (A 5-059-353, Dec. 11, 1951). In the case of *Andrew Dmytryshyn*, Dec. Aug. 19, 1953, the B.I.A. sustained the finding of fact by the hearing officer that the I.W.O. was an affiliate of the Communist Party, but ordered deportation proceedings terminated because alien established that he was not aware of such affiliation. Re-argued Sept. 16, 1953; no decision by June, 1954. Similar decisions were reached recently in the cases of *Maurizio Cardosi* and *Joseph Schiffel*. (Information from counsel for deportees.)

150. President's Commission Report 265. The Report discusses the problem of former Communist Party members who no longer believe in Communist doctrines and makes some proposals for amending the section of the Walter-McCarran Act covering this point, 226-28.

post facto legislation applied to deportation proceedings, 82% of this group would not be deportable because their membership ceased before passage of the 1940 Act making past membership grounds for deportation.¹⁵¹

TABLE 8

DATES OF PAST COMMUNIST PARTY MEMBERSHIP OF
51 DEPORTEES: 1944-1952

	Cumulative	
	No.	%
Dates of past membership not known	3	6.
Membership ended before 1925	1	2.
before 1930	4	8.
before 1935	15	29.
before 1940	42	82.
before 1946	48	100.
Total known	51	

In only one of the 219 cases studied did the Service seek to prove that the individual deportee personally believed in and advocated the overthrow of the government by force and violence. Peter Harisiades, an official of the Communist Party for a decade, was dropped from membership in 1939 when the party limited membership to citizens. In his deportation hearings he admitted his prior membership, said that he still believed in Marxism, and testified at length concerning his beliefs. Since both sides considered this a test case, the government conducted a vigorous cross-examination of Harisiades and his main witness, naturalized-citizen William Schneiderman. The Board of Immigration Appeals held¹⁵² that no personal belief in or advocacy of violent overthrow had been shown.

In addition to their political activity, the majority of the deportees in this period were past or present members of trade unions and/or fraternal organizations. Many had been officers of such organizations, and at the time of their arrests twenty-one were officers of local or international unions, twelve were officers of fraternal organizations and twelve were editors or reporters with foreign-language newspapers.

Eleven of the deportees had fought in the Loyalist army in the Spanish Civil War a decade before their arrests. Several of the 219 political deportees had been involved in strikes and union organizing campaigns in the 1930s. At least two were arrested at that time in anti-Nazi demonstrations, and one for

picketing a relief station in 1935. None had been convicted of a felony in a political case prior to his arrest for deportation; although nine have since been convicted of violating the "conspiracy to advocate" section of the Smith Act. In the great majority of the cases the government made no claim that the deportee was currently engaged in proscribed political activity; it presented evidence of former membership in the Communist Party and nothing further.

C. Other pertinent information on the likelihood and ability of political deportees to attempt to overthrow the U. S. Government by force and violence.

None of the political deportees in the three periods studied took any active steps looking toward the overthrow of the government.¹⁵³ Some of them made comments (in writings, speeches, or testimony to Immigration officials) indicating that the form of government should be changed and that force might/would be involved in this change. Using the terms made familiar by current Smith Act indictments, the arrests were based on membership in or participation in a "conspiracy to advocate" violent overthrow.

One test of the criminal tendencies of the deportees is their criminal records prior to deportation arrests:

Extent of non-political criminal records of political deportees:

- 1. 1919-1920:** No information available on this point.
- 2. 1930-1937:** One of the fifty-three deportees studied had served two sentences for forgery of checks fourteen years before his deportation arrest. He had gotten into no difficulties since, had married a citizen and become the father of three children. Another had been convicted of aiding and advising another non-citizen to make false statements in applying for citizenship. (His deportation was cancelled when he was granted a pardon.)¹⁵⁴
- 3. 1944-1952:** Eleven of the 219 deportees in this period were charged with criminal violations of the deportation laws at some time prior to 1953¹⁵⁵ (making false statements on naturalization applications,

153. The anarchist *Alexander Berkman*, arrested during the first period and deported on the *Buford* Dec. 1919, had been sentenced to a long prison term for the attempted assassination of industrialist Henry Clay Frick in connection with the Homestead strike of 1892.

154. *Walter Baer* and *Chris Popoff*, in that order. (Citations in Appendix B.)

155. *David Balint*, *Doyle*, *Karasek*, *Minasian*, *Obermeier*, *Spector*, *Tandarie*, *Torres*, *Vallon*, *Joe Weber*, *Weiner*. (Citations in Appendix C.)

151. 54 Stat. 673, 8 U. S. C. 137.

152. File A 5-300-756, decided May 13, 1949. For another case in which the Service sought to prove personal belief, see *Hearings and Conclusions of Trial Examiner Landis in the first Harry Bridges case*, 133 (1939) and later decision by the Supreme Court on this question (arising out of second *Bridges* hearings), *Bridges v. Wixon*, 326 U. S. 135 (1945).

failing to deport themselves under 1952 Act, sec. 242e, etc.) At least one of the non-citizens was convicted of a non-political felony (robbery) as a youth of 18, but has been in no difficulties in the intervening 25 years.¹⁵⁶ No other non-political convictions are known; the great majority of the 219 were arrested for the first time in their lives when served with warrants for deportation.

Age and sex of political deportees at time of arrest: Some slight indication of the ability of the deportees to act in a forceful or violent way can be seen from their ages when arrested, and their sex. (Neither factor would seriously affect their ability to advocate such change by speech, publication or assembly.)

1. 1919-1920: No information. The majority arrested were men, but some women were also detained.

2. 1930-1937: 51 men and 2 women comprised the 53 cases studied. The ages of only 12 are known: the youngest was 17; 10 were between 20 and 45; 1 was over 45. These figures are in no way conclusive, but, in conjunction with other facts (extent of participation in demonstrations, strikes, etc.) seem to indicate that many of the group, if not the majority, were relatively young and active when arrested.

3. 1944-1952: 185 men and 34 women were studied in this period.

TABLE 9

AGES OF 219 POLITICAL DEPORTEES AS OF
JANUARY, 1952: 1944-1952¹⁵⁷

	Cumulative	
	No.	%
Over 65 years	10	5.
Over 56 years	66	34.
Over 46 years	157	80.
Over 36 years	194	98.
Over 25 years	197	100.
Facts not known.....	22	
Total studied	219	

Eight deportees died while their cases were pending, and two died soon after being deported. At least 2 required hospital treatment while being detained at Ellis Island.¹⁵⁸

^{156.} Joe Lukas. (Citation in Appendix C).

^{157.} Or date of conclusion of case.

^{158.} Died while cases pending: Alex Balint, Garcia, Misir, Paivio, Zallas, Weiner, C. Kratochvil, Rothstein; died after being deported: Cruz and Martinez (note 177); Milgrom sent from Ellis Island to Mt. Sinai Hospital, winter 1952-3; Yaris sent to Bellevue Hospital from Ellis Island, spring 1953. (Citations in Appendix C).

Participation in U. S. Armed Forces: Some inferences as to the likelihood of political deportees seeking to overthrow our government may perhaps be drawn from their attitude toward participation in our Armed Forces.

1. 1919-1920: No information.

2. 1930-1937: No information.

3. 1944-1952: 4 of this group are veterans of the first World War, 5 are veterans of the second World War, and one, a Korean, served with the O.S.S. during World War II. 24 of the group have sons who fought in World War II or are currently in the Armed Services. None of this group rejected military service.

It is admitted that limited data has been presented concerning the political beliefs and activities of the deportees studied. But when dealing with the 1918 Act, which prescribes deportation for political beliefs, associations, memberships and activities, it is not easy to know what data is significant and what is definitely superfluous. Nor is it easy to obtain the kinds of data which are clearly significant. However, sufficient evidence has been presented to indicate that the arrests cannot be correlated with the dates of the past proscribed activities of the persons arrested, or the likelihood of their participating in illegal activities in the future.

In the 1919-1920 period, the arrests were reportedly made in order to forestall future bomb plots against government officials. In fact the specific dates of the mass arrests were set arbitrarily by the Departments of Justice and Labor, some of whose agents arranged that meetings of objectionable organizations be held on those dates, to facilitate the making of arrests.¹⁵⁹ The persons arrested were not taken while engaged in illegal activities and deportation hearings showed that the overwhelming majority had never been engaged in such activity at any time. Due to the work of the Justice agents within several of the proscribed organizations, the Labor Department could have been made aware of the names and non-citizen status of many of those arrested long prior to the mass arrests.

In the second period, 1930-1937, the deportees were arrested while engaged in activities which the Labor Department deemed objectionable (whether or not citizens engaged in similar activities could have been punished therefor). They were in effect arrested for deportation as a result of actions which were not themselves deportable offenses. In this respect this period is unlike the other two periods studied.

^{159.} *Coyler v. Skeffington*, 265 F. 17, 67-8, 69 (1920); Post, op. cit., 82-3 (1923).

In the third period, 1944-1952, the discrepancy between the time and circumstance of the arrests and the dates and character of the deportees' proscribed activities is most marked. As in the 1919-1920 period, arrests apparently were made according to a schedule set up by the Justice Department, although the majority of the arrests were made singly or in small groups. But the government did not make clear why it arrested someone in this period for his activities one or two decades ago. In those two instances in which mass re-arrests took place (October 1950 and August 1951), the courts ruled that the deportees could remain at liberty because their activities prior to the re-arrests had been unexceptionable.

The question remains to be answered: if the majority of the arrests were not timed in relation to the objectionable activities of the persons arrested, what were the motives behind the arrests? The published state-

ments of the Immigration Service do not provide a satisfactory answer and their files are of course closed in this regard. A research writer speculating on the motives behind these thousands of political deportation arrests might study the political and economic situation of this country in the three periods studied, the anti-foreign-born attitude resulting therefrom, the lack of political power of these non-voting residents, and the degree of public acceptance of First Amendment concepts. The absence of a reasonable statute of limitations on political deportation arrests has given such factors much freer rein than they are permitted in other areas of the law. Only changed political and social philosophies can explain the arrests in the 1940's for activities or associations not illegal in 1920 or 1930 when committed. In order to test such speculations, it is necessary to discover the results of these arrests in terms of actual deportations from this country.

III. What proportion of the persons arrested for deportation on political grounds have actually been expelled from the U. S. in the periods studied?

TABLE 10

RESULTS OF ARRESTS FOR DEPORTATION ON POLITICAL GROUNDS: 1919-1920, 1930-1937, 1944-1952

	1919-1920		1930-1937		1944-1952*		Totals for 3 periods	
	No.	%	No.	%	No.	%	No.	%
Total arrests studied	5,000-6,000	100	53	100	219	100	5,272-6,272	100
Citizens arrested; released	1,500	30	0	0	0	0	1,500	28
Arrested on warrants (issued before or after arrests)	3,500-4,500	70	53	100	219	100	3,772-4,772	72
CASES IN WHICH WARRANTS ISSUED:								
Warrants cancelled after deportation hearings	2,200-3,000	62.8	10	19.	4	1.8	2,214-3,014	58.7
Warrants cancelled after court action	20	.5	5	9.	3	1.3	28	.7
Warrants cancelled because citizenship granted	0	0	0	0	2	.9	2	.05
Deportees died pending final determination of cases	2	.1	0	0	8	3.6	10	.25
Remained in U. S. after final order of deportation	6	.1	1	2.	0	0	7	.1
Actually deported in period studied	264-314	7.5-8.9	3	5.6	11	5.	278-328	7.3-9.1
Accepted voluntary departure in period studied ^a	0	0	6	11.	26	11.8	32	.7
Ordered deported but final outcome not known	595-666	11.-19.	18	33.	0	0	613-684	16.
Final administrative action not known	412	11.8	10	19.	26	11.8	448	11.9
Cases now pending	1	.1	0	0	139	63.5	140	3.7
TOTALS	3,500	100.	53	100.	219	100.	3,772	100.

Figures for 1919-1920 period found in sources cited in note 64; figures for other two periods from cases in Appendices B and C.

^a Voluntary departure is explained in note 166.

* Figures for 1944-1952 cases include events through June, 1954.

A. Results of political deportation arrests.

1. 1919-1920:

Of the five to six thousand persons arrested for political deportation in this period, 30% were citizens and were therefore released immediately after the arrests. An additional 44% were non-citizens against whom the government was not able to prove its charges; following hearings the deportation warrants were cancelled. 34 of the arrests in this period, therefore, were improper, based on insufficient evidence. Of the 2,200 to 3,000 who were released after their hearings, many had been confined for several weeks or months.

Of the remaining 25%, only 264 to 314 were actually deported during this period.¹⁶⁰ But the majority of the persons ordered deported could not in fact be expelled from the country because they were born in Czarist Russia and could not be deported to the Soviet Union because the U. S. had no diplomatic relations with that government.¹⁶¹ These non-citizens remained in this country; some undoubtedly became citizens. There is no indication how many later were arrested on other grounds, if any. A study of their activities after 1920, political and otherwise, is suggestive. In 1925 Lew Bonder, the "inarticulate Russian" referred to by Judge Anderson in the *Colyer* case,¹⁶² came before him again. In the intervening 5 years "he has been working at his trade, learning English, and taking music lessons" and had engaged in no improper activities.¹⁶³ Another lived peacefully in New England from 1920, when he was ordered deported, until 1951, meanwhile having married, become a father, supported his family and kept out of difficulties with law enforcement agencies. In 1951 he was ordered to report to the Immigration Service for deportation to Soviet Russia, although deportation was equally impossible in the two periods.¹⁶⁴

2. 1930-1937:

All of the 53 persons studied in this period were non-citizens (unlike the first period), and 3 persons

(5.6%) are known to have been deported. It is probable that an additional 28 persons (53%) were actually deported, including 18 ordered deported but in which final outcome of the cases is not known, and 10 cases in which final administrative action is not known.¹⁶⁵ Five deportees, natives of Italy, Germany and Japan, fearing prison or other punishment if the deportation orders were carried out, accepted voluntary departure¹⁶⁶ to other countries. One deportee, ordered deported to Germany, fled to Mexico without permission of the Immigration Service.¹⁶⁷

Out of the 53 cases, the warrants of arrest were cancelled in 15 (28%), as follows:

TABLE 11

WARRANTS CANCELLED OUT OF 53 POLITICAL DEPORTATION CASES: 1930-1937

Warrants cancelled by Immigration Service:

after T.U.U.L. disaffiliated from proscribed international group	2
after Service ruled evidence presented at hearing insufficient	2
after state dropped criminal syndicalism charges	3
after deportee received pardon for crime involving moral turpitude	1
but Service gave no reason	1

10 (19%)

Warrants cancelled after court action:

after Circuit Courts of Appeals ruled evidence insufficient for dep. ¹⁶⁸	3
after U. S. Supreme Court ruled past membership in Communist Party not grounds for deportation under 1918 Act ¹⁶⁹	1
after U. S. Supreme Court granted certiorari on question of deportation for membership in T.U.U.L. union ¹⁷⁰	1

5 (9%)

Total warrants cancelled 15 (28%)

160. Immigration Service figures show 314 political deportations in 1920 and 446 in 1921. Arrests in political deportation cases continued after the Palmer Raids ended in Jan. 1920, and the average Raid case took no more than 4-6 months from arrest to decision by Post, and few cases were extended by appeals to the courts. For these reasons it seems likely that Post's figure of 264-314 actual deportations resulting from the Raids is fairly accurate. However, it is possible that some Raids, arrests ended in deportation late in 1920 or 1921. The total deportations for 1920 and 1921 were 760. Post counted 264-314. Therefore no more than 446-496 additional deportations could have taken place, assuming that all of the deportations in those years were of persons arrested in the Raids. If 446-496 cases ended in deportation out of the 596-666 cases in which the alien was ordered deported but final outcome was unknown to the writers the total deportations resulting from the Raid arrests were 760, or 21.7%.

161. See notes 180, 181, 207, 214.

162. *Colyer v. Skeffington*, 265 F. 17, 69-70.

163. *Petition of Brooks*, 5 F. 2d 238, 239 (1925).

164. *Peter Tkachuk*.

165. The large number of political deportees who were actually expelled in this period (244) and the relative ease with which deportations could be accomplished (compared with the first and third periods) lead to this conclusion.

166. Voluntary departure is a procedure under which an alien ordered deported is permitted to depart at his own expense to a country of his choice, rather than be deported at the expense of the government to a country chosen by the government. A person who has thus departed voluntarily may re-enter the country under certain conditions. (Sec. 244 of Immigration Act of 1952). See Wickersham Report 56-8 (1931).

167. Further discussion of voluntary departure and countries of origin, *infra*, Table 12 and note 206.

168. *U. S. ex rel. Ohm v. Perkins*, 79 F. 2d 533 (2d Cir. 1935).

169. *Kessler v. Strecker*, 307 U. S. 22 (1939).

170. *U. S. ex rel. Boric v. Marshall*, cert. granted 290 U. S. 623, petition withdrawn at 709 (1935); see note 136.

At least one of the 28 ordered deported is known to have remained in the U. S., married a citizen, become a parent of American-citizen children and attempted to adjust his status in 1949. Five persons whose deportation warrants were cancelled in this period were re-arrested for deportation in the third period.¹⁷¹

3. 1911-1952:

Like the second period, all persons arrested in this period were non-citizens. Of 219 cases studied, 11 had ended in actual deportation through June, 1954 (5%). An additional 26 deportees had accepted voluntary departure (11.8%).¹⁷² The total number of deportees who left the country was therefore 37 (16.8%). 139 cases (63.5%) are still pending for this period,¹⁷³ and in another 26 cases the final administrative action is not known (11.8%). It would therefore be mathematically possible for this 75.3% of the cases to end in deportation, in addition to the 16.8% who have already departed. But in fact, deportation cannot be effected in 40% of these cases, since 86⁷⁴ of the deportees were born in Russia or other Eastern European countries which will not accept deportees from the U. S.¹⁷⁵ Thus the total prospective deportations (35.3%) plus the deportations already effected (5%) plus the voluntary departures already effected (11.8%) equal 52.1% of the total cases. That is, 52.1% of the cases could end in expulsion or departure from this country, assuming that every deportee who claimed he would be subjected to physical persecution in his home country (10%)¹⁷⁶ lost his case or was deported to another country.

In the first two periods, no cases known to the writers ended in the granting of citizenship and the cancellation of deportation warrants therefor. In the third period, 2 deportees (.9% of the cases) became naturalized citizens; 8 deportation cases ended in the death of the deportee prior to final determination. Of the 11 persons deported, 2 died soon afterward.¹⁷⁷

171. *Boric, Fierstein, Schneider, Strecker, Petroskey.*

172. Discussed at length, *infra* pp. 115, 121.

173. Discussed *infra* pp. 121-2.

174. Table 13 *infra* shows 97 deportees born in Russia or Eastern Europe, but of this number 11 have already accepted voluntary departure.

175. Discussed *infra*, pp. 115-6.

176. Table 13 *infra* shows 26 deportees claimed physical persecution; but of this number 6 have already accepted voluntary departure.

177. *Refugio Martinez* (citation in Appendix C) suffered a cerebral hemorrhage in 1952. After the Supreme Court split 4-4 on his case, thus upholding the decision of the Court of Appeals (which contained error, as confessed by the Service), the Service ordered his immediate deportation to Mexico. He suffered an attack on the train trip from Chicago south, and died 9 days after leaving his home in Chicago for Mexico. (Information from Eugene Cotton, Esq., Chicago.) Cruz died soon after deportation; his widow was arrested for deportation thereafter. (*The Lamp*, May-June 1954.)

B. The indirect penalties inherent in the administration of the law.

The facts presented in Table 10 indicate that, in many cases, the arrests have not been a step in the process of quickly expelling persons from the United States. On the contrary, it seems probable that many of the arrests were used rather as a means of making an example of certain individuals in order to discourage all residents, particularly non-citizens and naturalized citizens, from behaving in ways unacceptable to the Immigration authorities and the Department of Justice.¹⁷⁸ The deportation laws seem often to have been administered with a view to imposing on deportees various penalties other than deportation, such as incarceration, the financial expense of lengthy litigation, continuous personal insecurity, loss of employment. This hypothesis is supported by a study of three further factors in the cases: the countries of origin of the deportees; their detention without bail and the amount of bail required pending conclusion of their cases; the length of the proceedings.

1. 1919-1920:

Countries of origin of political deportees:

The majority of the deportees in this period were nationals of Russia. At the time the raids were carried out, the Soviet Government had come into power, but the representative of the Kerensky government remained in Washington. He had no power to grant passports valid for use in Soviet Russia. However, it seems clear that the Immigration Bureau was in fact able to negotiate with the Soviet government since it arranged for the turning over of the 184 deportees aboard the *Buford* to that government under a flag of truce.¹⁷⁹ The Bureau evidently thought that it could continue to deport persons to Soviet Russia in 1920, as shown by the *Okolitenko* case¹⁸⁰ (although in fact they were mistaken in this belief),¹⁸¹ and the deportees who were natives of other countries could be deported without

178. Concerning "making an example" as a means of discouraging violations of the criminal law, see Holmes, Oliver Wendell, "The Common Law" 46-9 (38th printing, 1945).

179. *Post*, op. cit. 5-6.

180. *Okolitenko* was deported to Russia twice in 1921-2 and was sent back each time because his passport had been issued by the diplomatic representative of the defunct Kerensky government. After four Atlantic crossings he was released by the Immigration Bureau; habeas corpus proceedings had been initiated for the third time. (*U. S. ex rel. Okolitenko v. Commr.* (unrep.) (#M9-235, M 9-344, M 9-398, S. D. N. Y. 192-), see brief for appellant in Court of Appeals, *Chew v. Colding*, 16 (decision at 192 F. 2d 1009 (2d Cir. 1952)). The late Carol King, Esq., was of counsel in *Okolitenko* and *Chew* cases.

181. On the same problem, see *Petition of Brooks*, 5 F. 2d 238 (D. C. Mass. 1925), *Saksagansky v. Weedon*, 53 F. 2d 13 (9th Cir. 1931), *ex parte Matthews*, 277 F. 857 (W. D. Wash., N. D. 1921); *Post*, op. cit., 284; *Wickersham Report* 118-19 (1931).

difficulty. Therefore no significance can be attached to this factor in this period.

Detention without bail and amount of bail required:

The attitude of the arresting officials toward detention and bail was much more indicative of the government's reasons for making the arrests. The customary purpose of detention pending final determination of a case is to insure the presence of the defending party at all stages of the proceedings. Bail is customarily denied when it is felt that there is a likelihood that the party will not live up to the terms of a bail bond, i.e., will not appear when called to administrative hearings or court proceedings. Particularly in deportation proceedings, in which the defending party is not charged with violation of criminal law, any incarceration while the case is pending should not amount to punishment.

Yet, whether by design or monumental lack of forethought,¹⁸² thousands of political deportees were jammed into filthy rooms lacking in sanitary facilities,¹⁸³ denied reading matter or recreation, and, in Hartford, Conn., punished for minor infractions by being locked in "sweat boxes" until unconscious.¹⁸⁴ All attempts to communicate with family, friends, or counsel were futile in the first few days, and in some cases, deportees were held incommunicado for months.¹⁸⁵

Although Secretary of Labor Wilson had set \$1,000 as the amount of bail to be required in the average deportation case, including political cases,¹⁸⁶ the Justice Department held the deportees without bail,¹⁸⁷ and when they were turned over to the Labor Department, it regularly set bail at \$10,000.¹⁸⁸ For non-English

speaking prisoners it was difficult even to learn how much bail was required.¹⁸⁹ For them to notify their friends was also difficult. But when these problems were solved, the raising of \$10,000 bail was clearly impossible in most instances. It cannot be supposed that the Immigration authorities were surprised that thousands of the deportees were unable to satisfy this bail requirement. In those instances which reached the courts, reasonable bonds were promptly set and the deportees did not violate their terms.¹⁹⁰

Length of proceedings:

Since the administrative procedure (from arrest through interrogation, hearing and submission to Asst. Secretary of Labor Post for decision) required four to six months,¹⁹¹ the majority of deportees were incarcerated for this period, including, of course, those whose deportation warrants were eventually cancelled.

It is difficult, in the face of these facts, to believe that the sole purpose of the Palmer Raids was the expulsion of aliens who threatened violent overthrow of the government. The Raids seem also to have been meant as a warning to all non-citizens to eschew efforts to achieve social reform by group action. The methods used in effecting these arrests seem more proper to the latter purpose than to the former one.

In New York some of the persons arrested November 7, 1919, were blackjacked, hit with stair rails, beaten, shoved, given black eyes.¹⁹² December 21, 1919, with the greatest haste and secrecy, 184 of those arrested in this manner were deported on the SS *Buford* (described above, p. 100): "Notice of only a few hours

182. *Colyer v. Skeffington*, 265 F. 17, 45.

183. See graphic description of situation at Deer Island in *Colyer* case. Judge Anderson mentioned the confusion; "the atmosphere of lawless disregard of the rights and feelings of these aliens as human beings" which affected "consciously or unconsciously" the inspectors who held deportation hearings there; the alien who committed suicide on the Island, one who was committed as insane and others "driven nearly, if not quite, to the verge of insanity." He concluded with the organization of "The Soviet Republic of Deer Island" by the deportees, who were "found to be capable of organizing amongst themselves, with the consent of and in amicable cooperation with their captors, an effective and democratic form of local government" to handle the problems of sanitary facilities, distribution of mail, etc. (265 F. 17, 45).

184. Report on Illegal Practices 7-16, especially affidavit starting on p. 12.

185. *Ibid.*

186. Post, op. cit. 72.

187. *Ibid.* at 69, 76-7, 106.

188. *Ibid.*, 105, 190-1. Bail can be granted in a deportation case in one of two ways: (1) The Immigration Service can set the bail at the time of making the arrest and accept the money put up for administrative bail. (2) If the Service refuses to set bail or sets bail in an amount which the deportee feels is unreasonable, he can seek a writ of habeas corpus (usually in the court for the Federal District where he is held). The court can then rule that the Attorney General abused his discretion in denying bail or setting unreasonably high bail, and the court can grant court bail. However, it frequently

develops that the court states what bail should be set and agrees to issue the writ of habeas corpus unless the Service accepts administrative bail in that amount within 24 hours. If the Service wishes to appeal the granting of bail, it refuses to accept administrative bail and the court grants the writ and accepts court bail in the sum set. The courts have repeatedly rejected the contention of the Service that the Attorney General's exercise of his discretion in setting or denying bail is not subject to review by the courts. *U. S. ex rel. Macklem v. Commr.*, 268 U. S. 679 (1925), *U. S. ex rel. Vajtauer v. Commrs.* (no citation for granting of bail by Justice Stone, April 28, 1925; deportation case 273 U. S. 103 (1927)); the most recent judicial expression of this view is in Justice Douglas' opinion, *Yanish v. Barber*, 73 S. Ct. 1105, 1108 (decided May 16, 1953).

189. Post, op. cit. 105, 190-1.

190. *Ibid.*, 155; *Colyer v. Skeffington*, 265 F. 17, 21, 78. In *U. S. ex rel. Weinstein v. Uhl*, 266 F. 929 (1920), the Immigration officials set bail at \$10,000. At the deportation hearing the non-citizen refused to answer certain questions, on advice of counsel. The Bureau then refused to accept the \$10,000 offered for bail until ordered to do so by the District Court. See other cases cited in Appendix A.

191. Post claimed that "dilatatory attention [was] given to the cases in the Bureau of Immigration after the arrests had been made, and manifestly at the instigation of the Department of Justice with which the Bureau was at the time 'cooperating.'" (op. cit., 69, 158-9.)

192. *Ibid.*, 31-2, quoting from N. Y. Times, Nov. 8, 1919; Report on Illegal Practices 16.

TABLE 12

COUNTRIES OF ORIGIN OF 53 POLITICAL DEPORTEES:
1930-1937

	No.	%
Countries in which deportees claimed they would be subjected to physical persecution because of their political beliefs	22	56.
including		
Germany	7	
Italy	6	
Finland	5	
Poland	3	
Japan	1	
Country which refused to accept deportees for permanent residence during most of this period and to which deportees could not be sent		
Russia (now U.S.S.R.) ²⁰⁷	3	8.
Other countries of origin to which deportation could be completed	14	35.
	39	100.
Countries of origin not known	14	
Total	53	

but as visitors among us who had worn out their welcome." (Post, op. cit., 17-21.) See opinion of Judge Learned Hand in *U. S. ex rel. Gilotti v. Commr.*, 35 F. 2d 687 (2d Cir. 1929), in which the non-citizen was ordered deported to Italy despite his open anti-Fascist activity. This opinion was discussed in Wickersham Report in connection with refusal of Department of Labor to permit voluntary departure of Italian Communist *Guido Serio* to the Soviet Union, despite completion of all arrangements for his immediate departure there (120-23) (1931). In the winter of 1938, 19 men were detained at Ellis Island on their return to U. S. from fighting for the Loyalist Government in Spain. (I. J. A. Bull. Dec. 1938, p. 63.) Judge Bondy (S. D. N. Y.) dismissed petitions for writs of habeas corpus in two of these cases, but wrote on the back of each writ: "Under the unusual circumstances of this case the court suggests to the Secretary of Labor that she consider the advisability of permitting the subject to depart to a country where he may remain in safety." (Cases of *Stefanos Tsernegos* (Greece) and *Mirko Markovich* (Yugoslavia), N. Y. Times Nov. 26, 1938 (3:15).) *Anton Goepels*, German socialist, attempted to commit suicide when discovered as a stowaway on arriving in U. S., and required to surrender for deportation to Germany. Rep. Celler introduced a private bill in his behalf directing the Secretary of Labor to cancel the warrant of deportation against him. (I. J. A. Bull., Feb. 1938, p. 101.) H. R. 7640 was introduced in the 1937 session of Congress providing for the "right of political asylum" in such cases, but was not passed. In 1939 Judge Yankwich (D. C. Cal.) dismissed petitions for writs of habeas corpus by *Hans Kuth* and *Gunther Haberman*, active anti-Nazis in Germany before their entry into U. S., on the ground that they had no constitutional right to asylum here. (I. J. A. Bull., Aug. 1939, p. 11.) In *U. S. ex rel. Mueller v. Commr.*, 99 F. 2d 1019 (2d Cir. 1938), the court refused to reverse the order of deportation to Germany in the face of Mueller's membership in Communist Party in Germany and introduction by counsel of instructions issued by the German government concerning the treatment of Communists in the concentration camps. However, in *U. S. ex rel. Weinberg v. Schlotfeldt*, 26 F. Supp. 283 (Ill. 1938) the court took judicial notice of the plight of Jews in Czechoslovakia at that time and granted the writ prayed for. And see Oppenheimer, Recent Developments in the Deportation Process, 36 Mich. L. Rev. 355, 376 (1938).

207. In two cases in the 9th Circuit the courts affirmed the dismissal of habeas corpus writs by the District Courts but ruled that the deportees must be released within 30 days or so if deportation to the Soviet Union could not be effected.

The 22 cases mentioned above take on further significance because it was public knowledge that several of the deportees were arrested while participating in demonstrations against Nazism and Fascism at the German and Italian consulates.

Detention without bail and amount of bail required:

In this period these were not significant factors, since most deportees were promptly released on reasonable bail.²⁰⁸

Length of proceedings:

No facts are available on this point for this period. Since most of the deportees were free on bail pending final decision in their cases and were not threatened with re-arrest or difficult parole conditions during the proceedings, the length of the proceedings was not as significant as it became in the third period.

If the Immigration authorities were interested in pointing up a lesson by means of these 53 arrests during the depression years, it was that non-citizens who protested against other governments or marched on picketlines or demanded additional relief or spoke vociferously at city council meetings or attended Communist Party affairs might be arrested for deportation.

3. 1944-1952:

Countries of origin of political deportees:

Two of the points mentioned in relation to the earlier periods continued to complicate deportation in the third period:

a) In 1950 the McCarran Internal Security Act prohibited the expulsion of a person to "any country in which the Attorney General shall find that such alien would be subjected to physical persecution."²⁰⁹ This salutary provision, however, did not advise who had the burden of proof on this point, nor did it prescribe the character of the proof required by either party. If a country does persecute persons for their political beliefs, it probably also limits the freedom of foreign and native correspondents to report such facts, limits the accessibility of court records, tends to terrorize the residents so that they would be unwilling to make affidavits, and discourages their American relatives from making such affidavits. Already a number of cases have come before the courts, but no satisfactory solution of the evidentiary problem has been reached.²¹⁰

(*Saksagansky v. Weedin*, 53 F. 2d 13 (1931) and *Wolck v. Weedin*, 58 F. 2d 928 (1932).)

208. In *Berkman, Kjar* and *Ujich* cases bail was denied pending appeal. In the *Ujich* case the Supreme Court set bail at \$2,000 pending decision on petition for writ of certiorari, which was ultimately denied. (Citations in Appendix B.)

209. See similar section in 1952 Immigration Act, 243(h).

210. See notes 215 to 219, infra.

was given to the impounded deportees at Ellis Island that their voyage was about to begin. They had no opportunity to notify any one; and not until the 'Buford' was far out at sea were their relatives or friends or even lawyers of those who had lawyers aware of any intention to deport them at that or any other approximate time."¹⁹³ The same general procedures were repeated in more extensive raids on January 2, 1920, in which 2,500 to 5,000 persons were arrested in 33 cities.¹⁹⁴

The deportees from New England were chained and dragged through the streets of Boston on their way to Deer Island detention station, lined up for extensive photographing by newspaper reporters.¹⁹⁵ Throughout the country non-citizens were denied bail and held incommunicado,¹⁹⁶ they were beaten when they refused to make desired statements;¹⁹⁷ one learned that his signature had been forged to such a statement;¹⁹⁸ they were denied counsel until after the government had put in its case at their deportation hearings;¹⁹⁹ one was found dead after being held incommunicado by Justice Department agents for eight weeks in New York City and never turned over to the Labor Department;²⁰⁰ 800 were held in a section of a corridor in the Detroit Federal Building for 3 to 6 days and nights²⁰¹ and then subjected to brutality by guards at Fort Wayne.²⁰²

In 1936, Col. D. W. MacCormack, U. S. Commissioner of Immigration and Naturalization, speaking to a Congressional committee from the historical perspective of 16 years, summarized:

¹⁹³ Ibid., 5.

¹⁹⁴ For verbatim copies of instructions issued by Department of Justice officials in Washington to local agents, see *Colyer v. Skeffington*, 265 F. 17, 31-8 (1920). Post, op. cit. 91 and "Since the Buford Sailed", op. cit., 3.

¹⁹⁵ *Colyer v. Skeffington*, 265 F. 17, 44.

¹⁹⁶ Report on Illegal Practices 11, 31; Post, op. cit. 105.

¹⁹⁷ Report on Illegal Practices 31 (case of *Gaspare Cannone*).

¹⁹⁸ Ibid., 31-6, concerning the case of *Gaspare Cannone*, including photostatic copies of signature of non-citizen and signature on statement. Post cites many cases in which aliens made admissions of Communist Party membership while in custody of Justice Department which were patently false, such as admissions of membership prior to formation of the party. Post, op. cit., 216-17, 195-200.

¹⁹⁹ For discussion of change of rules re counsel at deportation hearings, see *Colyer v. Skeffington*, 265 F. 17, 46-7, and Post, op. cit. 85.

²⁰⁰ *Andrea Salsedo*. See accounts in Report on Illegal Practices 21-2; Post, op. cit. 279-82, and *Salsedo v. Palmer, et al.*, 278 F. 92 (2d Cir. 1921). For effect of this incident on other non-citizens, see testimony of Sacco and Vanzetti (arrested in Boston the day after Salsedo's death), II The Sacco-Vanzetti Case: Transcript of the Record of the Trial 1920-1927, 1849, 1808-9 (1928). The Justice Department maintained that Salsedo and Elia were held at their own request. (Post, op. cit. 280.)

²⁰¹ Report on Illegal Practices 22, quoting from The Nation, Jan. 31 and Apr. 10, 1920.

²⁰² Ibid., 24.

"* * * deportation law and the methods employed in its enforcement had earned the censure of the courts, the pulpit, the press and the public. A record number of deportations was the chief objective and the measure of efficiency. Arrests without warrant in violation of law were not the exception but the rule. Illegal raids on peaceful assemblages and forceful detention of those present, alien and citizen alike, were frequent occurrences. Third degree methods were employed."²⁰³

Attorney General Palmer explained the reason he adopted these methods: when you suppose you are "trying to protect the community against moral rats you sometimes get to thinking more of your trap's effectiveness than of its lawful construction."²⁰⁴

2. 1930-1937:

A study of the countries of origin of political deportees supports the thesis that the Immigration Service used political deportation cases to discourage social protest.

Countries of origin of political deportees:

Two preliminary points must be mentioned before presenting Table 12: 1) Many European boundaries changed between 1910 and 1937; so that 3 of the deportees were subject to deportation to nations other than those from which they had emigrated.²⁰⁵ 2) At this time the law provided no relief for non-citizens ordered deported to countries in which they feared they would be subjected to physical persecution. Several courts were deeply disturbed by this omission and attempted to ameliorate the situation by appealing to the discretionary powers of the Secretary of Labor.²⁰⁶

²⁰³ H. Res. 350, H. Doc. 392, 74th Cong., 2d sess. Judge Anderson wrote: "I refrain from any extended comment on the lawlessness of these proceedings by our supposedly law-enforcing officials. The documents and acts speak for themselves. It may, however, fitly be observed that a mob is a mob, whether made up of government officials acting under instructions from the Department of Justice, or of criminals, loafers, and the vicious classes!" (*Colyer v. Skeffington*, 265 F. 17, 43.)

²⁰⁴ Quoted in Post, op. cit. 93. Judge Bourquin commented on this point with vigor in *ex parte Jackson*, 263 F. 110 (1920).

²⁰⁵ See, e.g., *Berkman v. Tillinghast*, 58 F. 2d 621 (1st Cir. 1932) and comments in 1 I. J. A. Bull. 2, p. 4 (1932). This problem did not disturb Mr. Justice Brandeis in *Menservich v. Tod*, 264 U. S. 134 (1924). See also *Kessler v. Strecker*, 307 U. S. 22, note 1 on 25 re difficulty in getting consent of Polish government to accept Strecker, who was born in a part of Austria which became part of Poland after his emigration to the U. S.

²⁰⁶ Assistant Secretary of Labor Post faced this problem in several political deportation cases before him in 1919 (see note 53, supra). He ordered *Emma Goldman* and *Alexander Berkman* deported to "'Red Russia' * * * and not to 'White Russia,' where at that time they would probably have fared worse than a 'White' spy in a 'Red' camp." He sent them on the Buford because this would "secure their return to their home country, not as convicted criminals, which they were not,

This provision has not reassured deportees from Greece, Yugoslavia or Portugal, 5 of whom accepted voluntary departure to other countries after being ordered deported to their homelands. One Spanish national committed suicide pending final determination of his case.²¹¹

b) After recognition of the Soviet government by the United States in 1933, passports were made available by that government for a short time, and some deportations to Russia were effected. But by 1935, the Soviet government had adopted the policy of refusing to issue passports in any political deportation cases. This policy has been continued up to the present time and is now concurred in by the other Eastern European governments. This fact was, of course, known to the Immigration officials who issued the warrants in the deportation cases studied. Yet almost half of the persons arrested since 1944 were born in Russia or Eastern Europe and are therefore undeportable to their native lands. The 1950 Act²¹² for the first time permitted deportation of persons to countries other than their countries of origin, that is, a person born in Czarist Russia can now be deported to any country in the world which will accept him for permanent residence. However, since the enactment of this provision in 1950 no countries have exhibited a willingness to issue passports to political deportees from Eastern Europe or Russia.²¹³ The Immigration officials might have expected this result despite the change in our statutory approach.²¹⁴

The 1952 Act (sec. 242(e)) introduced criminal penalties (1) for willful failure to depart from the United States within six months of a final order of deportation, and (2) for willful failure to make timely application

for travel documents necessary for such departure. Three political deportees studied in the third period were arrested on one or both charges in 1953, and two have already been convicted and sentenced. Two of the three deportees were born in Eastern Europe or Russia and, in view of the uniform refusal of these countries to accept American deportees, it seems unlikely that their applications would have been accepted. The third deportee applied for travel documents to Finland after his arrest. Although these documents had arrived prior to the trial date, the Justice Department prohibited his immediate departure and went forward with the trial. After his conviction and sentence to two 5-year terms running consecutively, the Court provided that the second 5-year sentence could be suspended if the deportee left immediately after serving the first 5 years.^{214a} None of these prosecutions hastened the departure of the deportees, and one actually postponed it for five years. They did serve to punish the three deportees, and to "make examples" of them in the eyes of other non-citizens.

TABLE 13

COUNTRIES OF ORIGIN OF 219 POLITICAL DEPORTEES:
1944-1952

	No.	%
Countries in which deportees claim they would be subjected to physical persecution because of their political beliefs	26	13.
including		
Greece ²¹⁵	9	
Korea ²¹⁶	1	
Portugal ²¹⁷	1	

214a. *Martin Karasek*, 51, a native of Czechoslovakia, was ordered deported in 1935 but his departure was not effected. He has lived in the United States for 49 years. In 1953 he told Immigration officials that "it would have been a waste of time" to apply for travel papers from Czechoslovakia after passage of the 1952 Act. In May, 1954 he was convicted on the two counts, received a 20-year suspended sentence and was placed on probation for 20 years. The case is now on appeal. *Frank Spector* came to this country from Russia in 1913, and a 1930 order of deportation against him was never carried out. His attempt to have sec. 242(e) declared unconstitutional because of vague and indefinite language was unsuccessful (*United States v. Spector*, 343 U. S. 169 (1952)), and his trial was set for June, 1954. *Knut Heikkinen*, 64, editorial writer for a Finnish newspaper, has lived here 45 years. In April, 1954 he was convicted on two counts and sentenced to 10 years. His case is on appeal. (See citations in Appendix C; other information from counsel for deportees.)

215. This issue was not decided by any court in the *Hari-siades* case (342 U. S. 580 (1952)); the deportee finally accepted voluntary departure to Poland (1952) before the issue was tested further in the courts.

216. *San Ryup Park v. Barber*, 107 F. Supp. 603 and especially the second decision at 605 (Calif. 1952). Court granted writ after discussing the proof offered by the Service as to the type of treatment the deportee could expect to receive in South Korea.

217. In the *Figuerido* case, the Attorney General ruled that Portugal was not such a country. Mrs. Figuerido accepted voluntary departure to Poland (May 25, 1953) and did not test this ruling in the courts.

211. *Genaro Garcia*.

212. See similar section in 1952 Immigration Act, 243(a)(7).

213. Although *Shaughnessy v. U. S. ex rel. Mezei* (73 S. Ct. 625 (1953)) is an exclusion case, the facts are similar to some of the political deportation cases studied, since Mezei had lived in this country for 25 years prior to his two-year stay in Europe (1948-50), and he was excluded for membership in the International Workers Order. He applied to 25 countries for admission for permanent residence and to date has been rejected by 17. Two trips across the Atlantic were unavailing, since England and France refused to admit him. (He was detained at Ellis Island from shortly after the Supreme Court decision March 16, 1953 (N. Y. Times, April 23, 1953, p. 1), until July, 1954.) In *Kusman v. Shaughnessy* (Civ. No. 88-219, S. D. N. Y., Dec. 28, 1953), Judge Edward Weinfeld ordered deportee released by the Service because undeportable to Estonia.

214. See dissent of Justice Jackson in *U. S. v. Spector*, 343 U. S. 169 (1952): "A deportation policy can be successful only to the extent that some other state is willing to receive those we expel. But, except selected individuals who can do us more harm abroad than here, what Communist power will cooperate with our deportation policy by receiving our expelled Communist aliens? And what non-Communist power feels such confidence in its own domestic security that it can risk taking in persons this stable and powerful Republic finds dangerous to its security? World conditions seem to frustrate the policy of deportation of subversives. Once they gain admission here, they are our problem and one that cannot be shipped to some other part of the world." (179-80).

Spain ²¹⁸	1	
Yugoslavia ²¹⁹	14	
Countries which will refuse to accept these deportees for permanent residence and who therefore cannot be deported to their countries of origin	97	47.
including		
Russia, Estonia, Latvia, Lithuania, Ukraine (now U.S.S.R.)	123	60.
Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Rumania	59	
Other countries of origin to which deportation could be completed	81	40.
including		
7 who were born in Philippine Islands as nationals of U. S. and who successfully sought to prevent their deportation to the now independent Philippine Islands ²²⁰		100.
Born in U. S., but alleged to have lost citizenship	1	
Countries of origin not known	14	
Total cases studied	219	

Since 60% of the persons arrested in the recent period probably cannot be deported, the reason for prosecution of their deportation cases must lie elsewhere.

Detention without bail and amount of bail required:

The attitude of the Immigration Service in denying bail and imposing parole conditions upon political deportees in the recent period is one of the clearest indications that the purpose of the deportation arrests is not solely the expulsion of undesirable aliens, but rather the "making an example" of "radical" non-citizens.

In February, 1948, five non-citizens were arrested for deportation in New York City, and denied release on bail by the Service. This was the first such denial

²¹⁸. Habeas corpus writ granted on this ground in *U. S. ex rel. Watts v. Shaughnessy*, 107 F. Supp. 613 (S. D. N. Y. 1952).

²¹⁹. Habeas corpus writs denied in *U. S. ex rel. Miletic v. Dist. Dir.*, 108 F. Supp. 719 (S. D. N. Y. 1952), and *U. S. ex rel. Dolenz v. Shaughnessy*, 107 F. Supp. 611 (S. D. N. Y. 1952).

²²⁰. June 17, 1953, the 9th Circuit Court of Appeals ruled, in *Mangaoang v. Boyd*, that Mangaoang was presently an alien but that, since he was a national of the U. S. at the time of his entry (before May 14, 1934, the effective date of the Philippine Islands Independence Act), he never "entered" within the meaning of the Internal Security Act of 1950 deportation provision, "aliens who are members of the Communist Party". The Supreme Court denied certiorari, 74 S. Ct. 129 (1953), and Mangaoang and two others similarly situated (*Absolar* and *Tancioco*) were subsequently released from deportation proceedings. On same point, see *Barber v. Gonzales*, 74 S. Ct. (1954), a non-political case.

of bail in deportation cases in many years.²²¹ Three of the five were national officers of trade unions,²²² one was a former leader of the German Communist Party who was trying to return to Germany,²²³ and one was a leader of the American Communist Party.²²⁴ The District Court dismissed their petitions for writs of habeas corpus when the Service contended that the Attorney General had not abused his discretion in denying bail, but released the deportees on \$3,500 court bail pending appeal from its decision.²²⁵ As a result of the decision of the Court of Appeals for the Second Circuit in August, 1948, administrative bail was granted during pendency of the deportation proceedings.²²⁶

From August 1948 until October 1950, the Immigration Service granted reasonable bail at the time of arresting political deportees, in most cases.²²⁷ The McCarran Act of 1950 changed the provisions concerning bail in deportation cases to permit the Attorney General, in his discretion, to continue the alien in custody pending final determination of deportability.²²⁸ There-

²²¹. See *Prentis v. Manooogian*, 16 F. 2d 422 (6th Cir. 1926); *Zapp v. Dist. Dir.*, 120 F. 2d 762 (2d Cir. 1941).

²²². *Ferdinand C. Smith*, National Secretary of National Maritime Union-CIO, executive board member CIO; *Charles A. Doyle*, International Vice-President of United Chemical Workers of America-CIO; *Irving Potash*, Vice-President of International Fur and Leather Workers Union-CIO (also member of Communist Party top leadership indicted under Smith Act in case of *Denis et al. v. U. S.*, 341 U. S. 494 (1951)).

²²³. *Gerhardt Eisler*.

²²⁴. *John Williamson*, National Trade Union Secretary of Communist Party.

²²⁵. See *U. S. ex rel. Eisler v. Dist. Dir.*, 76 F. Supp. 737, and *U. S. ex rel. Williamson v. Dist. Dir.*, 76 F. Supp. 739 (both S. D. N. Y., decided Feb. 17 and 18, respectively, 1948). Decision of Judge Bondy on March 6, 1948, granting bail pending appeal is not reported.

²²⁶. In *U. S. ex rel. Potash v. Dist. Dir.*, 169 F. 2d 747 and *U. S. ex rel. Doyle et al. v. Dist. Dir.*, 169 F. 2d 753 (both 2d Cir. 1948), the Court held that the Attorney General did not have unqualified discretion to fix bail in deportation cases and that the District Court should have held a hearing in order to determine whether or not there had been an abuse of discretion in refusing to fix bail. The hearing in the District Court was never held because in December 1948 the Service granted administrative bail of \$3,500 in place of the \$3,500 bail previously put up with Judge Bondy. For a short summary of the bail question in deportation cases, see VIII Law Guild Rev. 503-4 (1948).

²²⁷. Exceptions were the unreported cases of *Beatrice S. Johnson* and *Ferdinand C. Smith*, held in the summer of 1949 upon refusal to post \$25,000 bail; finally released on \$10,000 bail. (Information from the late C. King, Esq., New York.) See also *U. S. ex rel. Pirinsky v. Shaughnessy*, 188 F. 2d 708 (2d Cir. 1949).

²²⁸. Prior to the 1950 Act, the 1917 Immigration Act, as amended, had provided:

"Pending the final disposal of the case of any alien so taken into custody, he may be released upon a bond in the penalty of not less than five hundred dollars with security approved by the Attorney General, conditioned that such alien shall be produced when required for a hearing or hearings in regard to the charge upon which he has been taken into custody, and for deportation if he shall be

after, 13 of the 219 political deportees studied were denied bail at the time of their arrests.²²⁹

TABLE 14

BAIL AND DETENTION STATUS AT TIME OF ORIGINAL ARRESTS IN 219 POLITICAL DEPORTATION CASES: 1944-1952

Conditions of release	219 cases studied		% using figures compiled by Imm. Service, Dec. 1951 ²³⁰
	No.	%	
Recognizance, parole, conditional parole	20	12.	20.
\$ 500. bond	19	11.	10.
\$ 1,000.-1,500. bond	52	29.	28.
\$ 2,000.-3,500. bond	38	21.	24.
\$ 4,000.-5,000. bond	35	20.	12.
\$15,000. bond	0	0	.33
Detained, bail refused	13	7.	5.
Facts available	177	100.	100.
Facts not known	42		

Total cases studied 219

(Facts on bail and detention status were available in 177 of the 219 cases studied. The Immigration Service list contained 292 cases. Of this number, 144 appeared in the 177 cases studied by the writers.)

"The function of bail" in deportation cases "is to provide security for the appearance of the prisoner on the one hand and to protect his right to appeal, on the other."²³¹ In 12% of the cases the Service decided that the word of the deportees that they would appear for further proceedings was sufficient bond, without the necessity of putting up money bail. In 40% of the cases the bond was minimal.²³² In only 7% of the

found to be unlawfully within the United States." (8 U. S. C. 156, sec. 20.)

The 1950 Act (P. L. 831, Chap. 1024, 81st Cong., 2d Sess.) provided:

"Pending final determination of the deportability of any alien taken into custody under warrant of the Attorney General, such alien may, in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than \$500, with security approved by the Attorney General; or (3) be released on conditional parole."

Sec. 242(a) of the 1952 Act repeats the provisions in the 1950 Act, but adds a clause to (2): "be released under bond in the amount of not less than \$500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; * * *" (italics supplied).

229. Some of the 13 appealed to the courts for writs of habeas corpus but none of the cases reached the U. S. Supreme Court. See *U. S. ex rel. Belfrage v. Shaughnessy*, 113 F. Supp. 56, aff'd 211 F. 2d (2d Cir. 1954), for a recent political deportation case in which bail was denied by the Service at the time of arrest but granted by the court because the detention without bond was "without a reasonable foundation."

230. See Appendix C, note 1.

231. *Yanish v. Barber*, 73 S. Ct. 1105, 1108 (citing cases).

232. \$500 is the minimum bond provided for in the Act. Approximately \$302,500 was put up as bond in these civil deportation proceedings.

cases was bail denied. The Service was evidently correct in its estimate of the political deportees, since only one of the 219 deportees studied forfeited his bond by leaving the country illegally while proceedings were pending against him.²³³

However, in 1949 the Service required a number of deportees free on bail to report to the Service at regular intervals to answer questions as to changes of address, place of employment, etc. In court tests this requirement was upheld in some cases²³⁴ and rejected in others.²³⁵ It was carried into the McCarran Internal Security Act of 1950²³⁶ and the McCarran-Walter Act of 1952,²³⁷ together with other provisions for extensive control over deportees pending conclusion of their cases.²³⁸ Under these provisions, the Service in 1953 instituted the practice of calling in deportees to rewrite their bonds, adding conditions such as the following: deportees must agree to disassociate themselves from the Communist Party, other named organizations, and members of these groups; to discontinue any activity which might further the doctrines of these groups, and to give testimony under oath as to their activities and associations. (Failure to abide by such conditions to result in re-arrest and forfeiting the bail previously put up.) These requirements obviously raise serious constitutional questions as to vagueness of language in the conditions and as to violation of First Amendment guarantees to non-citizens. They also create difficult personal problems, particularly for deportees married to Communist Party officials or members, or to officials of other organizations on the Attorney General's list. These deportees apparently must choose between breaking up their homes by disassociating themselves from their spouses, or refusing to sign the agreement and subjecting themselves to re-arrest, indefinite detention and separation from both spouses and children.²³⁹ Justice Douglas recently granted bail

233. *Gerhardt Eisler*, see note 90.

234. E.g., *Lukas v. Ault et al.* (unrep.) (#27032, N. D. Ohio, E. Div., Feb. 7, 1950) (Freed, J.) But cf. *Petition of Brooks*, 5 F. 2d 238, 239 (D. C. Mass. 1925).

235. E.g., *Yanish v. Phelan*, 86 F. Supp. 461 (N. D. Cal., S. Div. 1949); *Hellman v. Zimmerman* (unrep.) (Civ. #9890, E. D. Pa., Aug. 3, 1949) (Bard, J.); *Saltzman v. Shaughnessy*, (unrep.) (Civ. #51-43, S. D. N. Y., Aug. 8, 1949) (Kaufman, J.).

236. Sec. 23.

237. Sec. 242(a).

238. Sec. 242(d).

239. Cases are pending in Federal District Court in Detroit involving close to 20 deportees who declined to sign new restrictive parole agreements and are seeking injunctive relief to prevent their incarceration. They are free pending decision in the cases. *In the Matter of Applications of Anna Kruchen et al.* (#12508), *Olimpiu Hanes* (#12507), *George Tacheff* (#12510) and *Arnold Schleich* (#12509) (all E. D. Mich., S. Div.) Several of the deportees involved are included in this study of 219 cases for 1944-1952, although their names do not appear in the titles of the cases. (Information from E. Goodman, Esq., Detroit.) In 6 similar cases in Los Angeles in which bail was cancelled May 18, 1953 and the deportees were

pending appeal in the first case to reach the courts on this issue.²⁴⁰ Yanish, a citizen of Russia, was admitted into this country in 1917. He was arrested under a deportation warrant in 1946, charged with membership in the Communist Party.

"Since his arrest and pending the determination of his deportability, he has been out on bond, first in the amount of \$1,000, then in the amount of \$500, and since 1949 in the amount of \$5,000. The Department of Justice makes no contention that the applicant is a person likely to flee or to go into hiding; nor that he has any criminal record or proclivity to conduct which would jeopardize the safety of the community, except his Communist Party membership which was the basis of the warrant of deportation. In fact during the seven years when applicant has been out on bond he apparently has been ready at all times to submit himself to the authority of the Immigration and Naturalization Service."²⁴¹

After the Board of Immigration Appeals confirmed the order of deportation, the Attorney General required Yanish to execute a new bond containing conditions similar to those described above.²⁴² Yanish refused to execute the bond and in due course was taken into custody.²⁴³ The District Court dismissed his petition for habeas corpus and his case is currently before the Court of Appeals. Both the District and Circuit Courts denied his application for bail pending appeal. Justice Douglas held that there is judicial review of the exer-

re-arrested, Federal Judge Harry C. Westover ordered 5 to be released on \$2,000 bail each, under the Justice Douglas opinion in the *Yanish* case (73 S. Ct. 1105). In the *Carlisle* case the Court held that the Service had presented sufficient evidence to warrant denial of bail. This case is on appeal to Justice Douglas. (Information from attorneys for deportees.)

240. *Yanish v. Barber*, 73 S. Ct. 1105 (May 16, 1953).

241. At 1106.

242. The condition included: a) alien to notify Immigration Service of any change in residence or employment within 48 hours after change is made; b) alien to apply for permission to change place of residence from one immigration district to another at least 48 hours prior to such change; c) alien shall report in person first Monday of each month to Immigration Service; d) "That said alien shall terminate and remain disassociated from, membership in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States," * * * (or any subdivision thereof); e) "That such alien shall refrain from associating with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in subparagraph (d) above;" f) "That said alien shall not violate section 2385 of the 'Smith Act' of June 25, 1948 (section 2385 of Title 18, U. S. Code * * * and section 4 of the Internal Security Act of September 23, 1950 (Section 783 of Title 50, U. S. Code) * * *". Quoted by Justice Douglas at 1107.

243. Yanish refused to execute the bond; filed a complaint in the District Court seeking an order restraining the Service from imprisoning him for failure to provide the new bond. The court held the conditions were within the power of the Attorney General to impose and denied relief.

cise of discretion by the Attorney General. As to the conditions imposed by the Immigration Service, he said:

"* * * The function of bail in situations such as the instant one is to provide security for the appearance of the prisoner on the one hand and to protect his right to appeal, on the other * * *. It is not apparent how at least some of the conditions attached to the bond serve those ends. Specifically, it is not obvious how the requirement that the alien give up his job with the Communist paper provides security for his appearance in case the Immigration and Naturalization Service can effect his deportation to Russia * * *. How that prohibition would do service in the tradition of Anglo-Saxon bail or how it would further the program of deportation which Congress has designed is not apparent * * *."²⁴⁴

Finding that Yanish's appeal presented substantial questions of law, Justice Douglas then admitted the applicant to \$5,000 bail "in the conventional meaning of the term" pending disposition of his appeal before the Court of Appeals.

As to deportees against whom an order of deportation has been outstanding for more than six months, the 1952 Act spells out the limits of the parole conditions which may be imposed, as follows:

"* * * (1) to appear from time to time before an immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper; and (4) to conform to such reasonable writ-

244. At 1108. Justice Douglas said further: "Condition (e), which would prevent the applicant 'from associating with any person, knowing or having reasonable ground to believe' that such person is a Communist, would, taken literally, prevent him from living with his Communist wife or going to a movie with his Communist son or seeing his Communist legal adviser or being treated by his Communist doctor. * * * On oral argument the Department of Justice says that the language would not, as a matter of administrative practice, be construed that way. But there is a broad sweep to the language that would permit another ruling on a different day. Moreover, condition (d) would require applicant to give up his job with the *Peoples World*—a job which so far as the record shows is not itself an illegal undertaking either under state or under federal law. Whether, pending deportation, an alien can be forced under the present law to make that choice—to give up a lawful job with a Communist paper or go to jail—certainly is not a frivolous question."

Several deportees have lost one or more non-political jobs when arrested or re-arrested at their places of employment, e.g. *Joe Lukas* (Cleveland), *Leon Callove* (Niles, O.), father of 9 citizen-children, lost his job after being arrested at work. There were threats that his home would be burned down and thereafter the fire insurance company cancelled his insurance. (Information from J. Land, Esq., Cleveland.)

ten restrictions on his conduct or activities as are prescribed by the Attorney General in his case."²⁴⁵

For willful violation of such conditions the deportee can be tried, convicted of a felony, sentenced to one year and/or payment of \$1,000 fine.²⁴⁶

The Immigration Service has recently attempted to impose parole conditions on New York political deportees whose final orders of deportation were entered more than six months ago, as follows: a) that they report weekly in person to Ellis Island; b) that they do not travel outside a radius of 50 miles from Times Square; c) that they discontinue membership in the Communist Party; d) that they cease all association with persons whom they know to be members or affiliates of the Communist Party. Since at least three of the deportees are officers and employees of that party, as well as defendants in a Smith Act case now on appeal, these conditions (imposed under section 242(d) of the 1952 Act), would make it impossible for them to continue their employment, and also to collaborate in their Smith Act appeal with their co-defendants. Federal Judges of the Southern District of New York signed interim restraining orders in 3 cases brought in September, 1953 and 11 similar cases brought in June, 1954. A three-judge statutory court in that District heard argument June 30, 1954 on the government's motion to dismiss; decision is pending.^{246a}

In another challenge to section 242(d), the Court of Appeals for the Eighth Circuit just affirmed^{246b} the judgment of the Federal District Court in *Rowoldt v. Shrode* (Civ. #4612, Minn. 4th Div., Nov. 25, 1953 by Judge Matthew M. Joyce); which ordered the Immigration Service to release the bond posted by deportee-Rowoldt because more than six months had elapsed since the date of the final deportation order and there is no provision in the Act which authorizes the posting, or the continued posting, of bond after the six-month period expires.

In addition to its imposition of stringent conditions upon deportees freed on bond and those subject to

supervisory parole, the Service has evidently reconsidered its approach to the granting of bail since the passage of the 1950 and 1952 Acts. The prelude to this change occurred in the *Potash* case discussed above, in which the Service maintained that the five deportees should be detained throughout the deportation proceedings. The five were freed by court action and Chief Judge Clark of the Second Circuit, in his concurring opinion, raised this question:

"* * * Several of these relators now appear to be at large upon substantial, though not unusual, bail upon criminal charges.²⁴⁷ If such bail is adequate there, it does seem an anomaly to require absolute imprisonment upon non-criminal charges. Moreover, if the charges involve substantially the same issues as here, the result of an open and adversary trial before judge and jury would seem a better ground upon which to base eventual deportation than that of an administrative hearing. If so, long-continued confinement administratively would seem yet more of an anomaly."²⁴⁸

But when the new act went into effect on October 22nd, 1950, the Service promptly rearrested 48 political deportees who had previously been arrested for deportation and freed on bail. All 48 brought actions for writs of habeas corpus.²⁴⁹ In none of the cases did the Service introduce evidence indicating the reason for the rearrest of the specific deportees.²⁵⁰ Rather it maintained that the Attorney General had absolute discretion to decide whether or not bail should be granted, and that the exercise of this discretion was not reviewable by the courts. In none of the cases did the Service charge that the deportee had violated the conditions of his bond or failed to appear when requested to do so.

246a. Judge Edward J. Dimock signed the interim restraining order in the *Bittleman* and *Gannett* cases, and Judge Edward W. Weinfeld signed an identical order in the *Jones* case, in Sept., 1953. The 11 cases brought in June, 1954, involve *Borich*, *Geiser*, *Gottesman*, *Kusman*, *Nelson*, *Nukk*, *Saltzman*, *Siminoff*, *Sklar*, *Taffler* and *Young*. (Citations in Appendix C for italicized cases; information from counsel, B. Freedman and G. Agrin, Esqs., New York.)

A similar restraining order was issued Dec. 17, 1953 in St. Louis in *Sentner v. Colarelli*, (Civ. #9440(1), E. D. Mo., E. Div.) by Federal Judge George H. Moore.

246b. *Shrode v. Rowoldt*, (not yet rep.), No. 15,027 (8th Cir.), decided June 17, 1954.

247. *Williamson* and *Potash* had been indicted under the Smith Act and *Eisler* had been indicted for making false statements on application for departure, and in an enemy alien case.

248. *U. S. ex rel. Potash v. Dist. Dir.*, 169 F. 2d 747 at 753 (1948).

249. For complete list of citations for the 48 cases, see King and Ginger, op. cit., XI Law. Guild Rev. 128, 129, notes 7, 8 and 10.

250. Ibid., 130-1 for verbatim copy of telegraphic instructions ordering the arrests.

245. Sec. 242(d), Immigration Act of 1952; formerly Sec. 23(b), Internal Security Act of 1950. The origin of this provision may be found in HR 4768, 76th Cong. (introduced by Rep. Hobbs, 1939) which provided that certain classes of deportees, including political cases, whose deportations could not be effected because of failure or refusal of their native lands to issue passports, should be "confined, though not at hard labor, until such time as deportation shall have become feasible." Congress took no action on the measure. In May 1939 an amended bill providing only for detention (provision for labor on farmlands having been omitted) passed the House 288-61 but was defeated in the Senate. In 1941 Hobbs reintroduced the bill. The then Attorney General (now Justice) Jackson made proposals which were incorporated in HR 3, 77th Cong., 1st Sess. These proposals by Jackson included exactly the same provisions now found in Sec. 242(d) of the 1952 Act. For a discussion of the constitutionality of the provisions, see IX I. J. A. Bull. 124 (1941).

246. Sec. 242(d), Immigration Act of 1952.

by the Service.²⁵¹ All 48 were eventually enlarged on bail, put up either with the courts or the Service.²⁵²

August 2, 1951, 39 deportees were re-arrested, including several of those detained in October, 1950. These re-arrests were based on a decision by the Service that bail put up by the Civil Rights Congress Bail Fund was no longer acceptable, and new bail would have to be furnished by these persons.²⁵³ (This decision followed the non-appearance of several Communist Party leaders whose bail had been furnished by this Bail Fund when they were indicted for violating the Smith Act.) All 39 were released on bail after relatively short periods of detention. In several cases they were released by District Courts on Bail Fund Bail.²⁵⁴

In addition to these re-arrests in 1950 and 1951, a few of the 219 non-citizens were re-arrested in 1952 and 1953. Altogether there have been 90 re-arrests involving 71 aliens.²⁵⁵ The following table indicates the outcome of such re-arrests.

TABLE 15

NUMBER OF RE-ARRESTS AND LENGTH OF DETENTION OF RE-ARRESTS: 1944-1952

	No.	Immigration Service figures, Dec. 1951 ²⁵⁶
Re-arrested once	71 deportees	51 deportees (inc.
Re-arrested twice	15 deportees	all re-arrests)
Re-arrested three times	4 deportees	
Total days detained	3,885 days *	1,859 days **
Average days detained	55 days *	36 days **
No. held over 2 months	14 deportees *	8 deportees **

* Figures do not include those detained when first arrested and never released.

** Figures do not include 11 detentions whose duration is not known to the writers.

251. Ibid., 131, note 32, 132, note 35.

252. After the adverse decision in *Carlson et al. v. Landon*, 342 U. S. 524 (1952), the Service, in the fall of 1952, accepted administrative bail for the four non-citizens involved in that case. In May, 1953 *Carlisle* was re-arrested and in July *Hyun* was ordered to surrender for deportation to South Korea (where he claims he will face physical persecution); *Mrs. Stevenson* was also ordered to surrender, and after some detention, was deported. (Information from deportees' attorneys). Despite the adverse decision in *Zydok v. Butterfield*, 342 U. S. 524 (1952), the Service did not re-arrest *Zydok*.

253. See discussion in King and Ginger, op. cit., 133 and cases cited there in notes 44 and 45.

254. Ibid., 133 re six cases in Detroit which came before District Judges Lederle and Levin. The Service refused to accept bail put up by bondsmen acceptable to the District Court (S. D. N. Y.) in another (criminal) case, in *U. S. ex rel. Bittelman v. Dist. Dir.*, (unrep.) (Civ. #68-382, Aug. 20, 1951) (Weinfeld, J.).

255. As of April, 1953.

256. For explanation of the discrepancy between the writers' figure and the figure given by the Service, see note 1 to Appendix C.

Since deportation is not punishment for a crime, but a proceeding for the expulsion of undesirable aliens, it is unusual that one-third of the persons arrested for deportation and freed on bail were later subjected to incarceration, one for 18 months and several over four months. When their cases finally reached the courts, all but 7 were released (out of 90 re-arrests). Over one-third were released on the same amount of bail which they had put up when originally arrested, and two were actually released on lower bail.

In searching for the reasons for such incarceration, these facts appear: of the 26 deportees in this period who accepted voluntary departure, 13 had been re-arrested once, 4 had been re-arrested twice and one three times. Since 11 of the 26 were born in Russia or Eastern Europe and were therefore undeportable, it may be inferred that they departed in order to avoid further re-arrests.

TABLE 16

DETENTION AND RELEASE OF DEPORTEES AT TIME OF ORIGINAL ARRESTS AND RE-ARRESTS

	No.	Immigration Service figures, Dec. 1951 ²⁵⁷
No. of detentions of deportees, including at time of arrest and re-arrests (more than one re-arrest in some cases)	90	63
No. released by court setting bond at time of original arrest	5	3
No. released by court after re-arrest:		
on same bond originally accepted by Service	35	31
on higher bond than that originally accepted by Service	20	16
on lower bond than that originally accepted by Service	2	1
No. who departed at time of re-arrest	2	not shown
No. not released	7	12
Facts concerning release not known	19	0
Totals	90	63

The issue of detention and parole conditions obviously becomes critical when the proceedings are protracted.

257. Ibid.

Length of Proceedings:

TABLE 17

LENGTH OF TIME BETWEEN ARREST AND JAN. 1953 OR
DATE OF CONCLUSION OF CASE: 1944-1952

No. of years pending	Cumulative	
	No. of cases	%
21 to 33 years.....	8	4.
Over 16 years.....	15	8.
Over 11 years.....	24	13.
Over 6 years.....	44	23.
Over 4 years.....	127	66.
Over 2 years.....	193	100.
Total known	193	
Total not known.....	26	
Total cases studied.....	219	

Of the 26 cases ending in voluntary departure, one had been pending 22 years, 1 for 16 years, and two for 6 to 8 years.

Persons outside the Immigration Service cannot be sure of the reasons for the length of the administrative proceedings. In many cases, a delay of two years was caused by the failure of the Service to comply with the provisions of the Administrative Procedures Act, effective in 1947. All hearings held between 1947 and February, 1950 (when the *Sung*²⁵⁸ decision was handed down by the Supreme Court) were void and new hearings were necessary, even though the Service was later exempted from the provisions of the Act.²⁵⁹ Since outright victory is seldom achieved in these cases, counsel for the deportees have not customarily pressed for immediately administrative action when the Service moved slowly.²⁶⁰

No comparison between length of deportation proceedings and other types of actions is possible, since no comparable statistics are available. Criminal law cases are similar to deportation proceedings in terms of bail, detention status, and penalties. It seems doubtful, how-

ever, that many criminal cases continue as long as these deportation proceedings, even where there are repeated appeals to the courts following conviction.²⁶¹ The long administrative proceedings concerning increases in railroad fares or other public utilities problems are not comparable, since the outcome does not affect the lives of individual defendants. Most civil cases come to trial within two years of their inception, and, even with appeals, do not customarily last over four years.

Conclusions

I. On the basis of the material presented above concerning the three periods studied, it is possible to arrive at two conclusions concerning the "alienage" of the political deportees arrested:

A. Since the mass arrests of citizens and aliens without warrants in 1919-1920, there has been a change of policy in the Immigration Service. Arrests now take place by means of warrants, and the persons arrested are, by legal definition, aliens.

B. While a constructive change in policy was being made in this regard, an opposite trend was developing. The political deportees of the first period were still largely "aliens" in the sociological sense at the time of their arrests. While many of them had lived in this country for a decade or more, and some had families and organizational ties here, it is probably true that, as a group, they still spoke their native languages and spent most of their time with members of their national groups. The political deportees of the second period were younger, had lived in this country no longer than the first group. But they seem to have become a part of American life of the period to some extent by participating in trade unions, etc. It is more difficult to peg them accurately than it is the third group. The majority of the deportees of the 1940's and '50's are not "aliens" in any sense except a strictly legal one. Through long residence here, and the resultant family and work ties, they have become Americans and the responsibility of the American government. They have not engaged in activities limited to their nationality groupings, nor have they retained close ties with the countries of their

258. *Sung v. McGrath*, 339 U. S. 33. (1950).

259. See note 20, *supra*.

260. Perhaps the classic instance of administrative delay occurred in the *Harisiades* case. Harisiades was arrested by local police in New England in 1930 in connection with picketing during a strike. At that time he was interrogated by Immigration agents, the interview transcribed and signed by Harisiades. He was then released. In 1938 he moved to New York; the newspapers published notice of his marriage and of the subsequent births of his two children. In 1940 he registered under the Alien Registration Act, giving his address. Later he applied for citizenship. His name was listed in the telephone book in New York for a number of years, and it also appeared in the masthead of the language newspaper which he edited. In 1946 he was arrested for deportation (during interrogation on his citizenship application) on a warrant dated 1930. The Immigration agents stated to his counsel that they had not been able to locate him in the intervening years.

261. See, e.g., two exceptional criminal cases: the Sacco-Vanzetti case began in the spring, 1920, and the two were executed in August, 1927. (*Commonwealth v. Sacco and Vanzetti*, 255 Mass. 369, 151 NE 839; 259 Mass. 128, 156 NE 57; 261 Mass. 12, 158 NE 167; cert. den. 275 U. S. 574 (1927).) The Scottsboro cases went up to the Supreme Court three times, legal proceedings lasting from 1931 to 1938. (Names of defendants not given each time, but including *Patterson*, *Powell*, *Weems*, *Norris*, *Wright v. Alabama*, 224 Ala. 524 and 531 and 540, 141 S. 195 and 201 and 215 (1932); 287 U. S. 45 (1932); 229 Ala. 226 and 270, 156 S. 556 and 567 (1934); 294 U. S. 587 and 600 (1935); 234 Ala. 342, 175 S. 371 (1937); cert. denied 302 U. S. 733 (1937); 236 Ala. 261 and 263 and 281, 182 S. 3 and 5 and 69 (1938).)

birth. The current trend is to arrest for deportation people who have failed to achieve American citizenship, (although many applied for naturalization), but who have become Americans in the sociological sense.

II. Despite the gaps in the available information and the difficulties of generalizations in the area of political beliefs and activities, certain conclusions seem to flow from the material presented above concerning the proscribed actions, beliefs and affiliations of the political deportees studied:

A. The government did not present evidence of illegal actions of political deportees in the great majority of the cases studied in the three periods; that is, there was no evidence of actual attempts to use force or violence to overthrow the government of the United States. Only a few of the deportees were convicted under state or federal sedition statutes for acts relating to the advocacy of the use of force and violence, and none for the use thereof. Therefore the brutal methods of arrest or confinement in the first period and the restrictions on bail in the third period seem unwarranted.

B. In the first period the government presented proof in about 100 cases indicating that the individual deportees personally believed in or advocated the abolition of all government (anarchy) or believed that the government might/would be overthrown by force (as expressed in Marxist theory). In the second period, while the government relied primarily upon membership in proscribed organizations as the basis for deportation, it made some efforts to prove the proscribed character of the beliefs of the deportees, either through their own statements or through proof of their participation in strikes, demonstrations, or other mass activities. In the third period the government tried in only one case to establish personal belief in the violent overthrow of the government, and in that case it failed to prove this to the satisfaction of the Board of Immigration Appeals. In all of the other cases the government made no effort to prove that the individual deportee had illegal thoughts or plans or purposes.

C. The question, then, is the propriety of deporting people from the United States solely on the basis of membership in proscribed organizations. The problem is complicated by the fact that there is no statute of limitations in the 1918 Act, so that people can be deported for Communist Party membership which ended years before their arrests for deportation. It is further complicated by the fact that the non-citizens may have had no reason to believe that membership in the Communist Party was grounds for deportation at the time they joined that party, since it was not named in the deportation statutes until 1950. (It does

not seem likely that the majority of the non-citizens studied had an intent to act so as to make themselves deportable under the 1918 Act.²⁶² If guilt by association and bills of attainder violate due process in criminal cases, it is not easy to see why they should be permitted to be the basis for the majority of political deportations.²⁶³

III. Less than 10% of the non-citizens arrested for deportation in the three periods actually were expelled or accepted voluntary departure from this country. (An additional 16% may have been expelled.) Since this result could have been foretold in advance in the first and third periods, it is not difficult to believe that the motivating force behind the arrests was not deportation but the desire to discourage other Americans from acting as the political deportees had done. The Immigration Service has consistently favored statutory changes and has tried to achieve court victories which would make the Attorney General's decisions on the granting or denial of bail absolute and not subject to judicial review. The number of deportees held without bail (at the time of arrest or at some time during pendency of the proceedings) and the degree of control over the deportees enlarged on bail have increased markedly in the third period. It does not seem unlikely that the Service, as part of the Justice Department, is considering the use of deportation proceedings as a means of punishing "conspiracy to advocate" proscribed ideas, even though it realizes in advance that deportation will be impossible. Such a short-cut to punishment without judicial trial does not seem consonant with traditional principles of due process.

A Study Prepared for the Committee on Immigration and Naturalization of the National Lawyers Guild.

262. See discussion by Justice Black in his dissent in *Galvan v. Press*, 74 S. Ct. 737, 744 (1954), quoted in part in note 147.

263. The importance of the omission of these traditional safeguards in deportation cases can be observed quickly in connection with the 1944-1952 period: 70% of the deportees (for whom facts were available) were charged with past, concluded membership in the Communist Parties of the United States or the countries of their birth. Under the 1939 decision in the *Strecker* case, none of these would be deportable. In 1940 Congress amended the Act to make past membership grounds for deportation. (1) If the prohibition against ex post facto legislation applied in deportation proceedings, 82% would not be deportable because their membership ceased prior to the passage of this Act. (2) If the recommendation of the President's Commission were accepted, 69% would not be deportable because the proposed ten-year statute of limitations on deportations had run at the time of their arrests. (3) If the prohibition against findings of guilt by association applied in deportation proceedings and the membership and affiliation sections of the 1918 Act were repealed, none of the 219 non-citizens could be deported for personal belief in proscribed doctrine on the facts elicited in their deportation hearings. It is not a little doubtful that facts could be elicited to prove personal belief in proscribed doctrines or personal activities of a proscribed character, in view of the decision of the Board

APPENDIX A

Sources of Material on Political Deportation
Cases: 1919-1920

Cases: *Colyer v. Skeffington*, 265 F. 17 (D. C. Mass. 1920), rev'd on limited grounds in *Skeffington v. Katzeff*, 277 F. 129 (1st Cir. 1922). Re final outcome of one of the cases, see *Petition of Brooks, Bonder v. Johnson, Commr.*, 5 F. 2d 238 (D. C. Mass. 1925). *U. S. ex rel. Diamond v. Uhl*, 266 F. 34 (2d Cir. 1920); *ex parte Jackson*, 263 F. 110 (D. C. Mont. 1920); *U. S. ex rel. Rakics v. Uhl*, 266 F. 646 (2d Cir. 1920); *U. S. ex rel. Weinstein et al. v. Uhl*, 266 F. 929 (S. D. N. Y. 1920); *Salsedo v. Palmer, et al.*, 278 F. 92 (2d Cir. 1921); *Petition for Naturalization of John Waskowski*, #306755, certificate #6309250 (unrep.), (N. D. Ill. Mar. 18, 1946) (Barnes, J.). *Gaspare Cannone*, Labor Dept. Ellis Island file #54861/382.

Congressional Investigations: (1) Administration of Immigration Laws. Hearings before the Committee on Immigration and Naturalization, House of Representatives, 66th Cong., 2nd Sess., March 20, 31, April 6, 9, 10, May 25, 1920. (2) Communist and Anarchist Deportation Cases, and I.W.W. Deportation Cases. Hearings before a Subcommittee of the Committee on Immigration and Naturalization, House of Representatives, 66th Cong., 2nd Sess., April 21-24, 27-30, 1920. (3) Investigation of Administration of Louis F. Post, Assistant Secretary of Labor, in the Matter of Deportation of Aliens, and Attorney General A. Mitchell Palmer on Charges Made against Department of Justice by Louis F. Post and Others. Hearings before the Committee on Rules, House of Representatives, 66th Cong., 2nd Sess., on H. Res. 522, 1920.

Unofficial Investigations: (4) deSilver, "Since the Buford Sailed: a summary of developments in the deportation situation" (American Civil Liberties Union 1920); (5) Post, "The Deportations Delirium of Nineteen-twenty—A personal narrative of an historic official experience" (Kerr & Co. 1923); (6) "Report upon the Illegal Practices of the United States Department of Justice" (National Popular Government League, Washington, D. C., May 1920) (prepared by 12 lawyers and law professors, including R. G. Brown, Zechariah Chafee, Jr., Felix

Frankfurter, Ernst Freund, Swinburne Hale, Francis Fisher Kane, Alfred S. Niles, Roscoe Pound, Jackson H. Ralston, David Wallerstein, Frank P. Walsh and Tyrrell Williams.)

APPENDIX B

Sources of Material on 53 Political Deportation
Cases: 1930-1937

The Monthly Bulletin of the International Juridical Association, from its inception in 1932, regularly discussed unreported political deportation cases. The information on the cases was obtained from counsel for the deportees and from copies of pleadings prepared in the cases. The cases below are listed alphabetically by surname of the deportee.

Andanoff v. Zurbrick (unrep.) (#6387, 6th Cir., June 6, 1933) (per curiam); *Anderson v. U. S.*, 44 F. 2 953 (9th Cir. 1930); *Baer v. Norene*, 79 F. 2d 340 (9th Cir. 1935); *Alex Bail*, II I. J. A. Bull. 11, p. 4 (1934); *Erich Becker*, IV I. J. A. Bull. 4, p. 7 (1935); *Berkman v. Tillinghast*, 58 F. 2d 621 (1st Cir. 1932) and A 5-721-844;¹ *U. S. ex rel. Boric v. Marshall*, 4 F. Supp. 965 (W. D. Pa.); *aff'd* 67 F. 2d 1020 (3d Cir.), *cert. granted* 290 U. S. 623, *petition withdrawn* at 709 (1935); *Branch v. Cahill*, 88 F. 2d 545 (9th Cir. 1937); *Ray Carlson*, III I. J. A. Bull. 8, p. 6 (1935); *Villi Eccor*, I I. J. A. Bull. 6, p. 1 (1932); *Evanoff et al. v. Bonham*, 50 F. 2d 756 (9th Cir. 1931); *U. S. ex rel. Fernandes v. Commr.*, 65 F. 2d 593 (2d Cir. 1933); *U. S. ex rel. Ferrero v. Commissioner*, 86 F. 2d 1021 (2d Cir. 1936), *cert. den.* 300 U. S. 653 (1937); *Ex parte Fierstein*,² 41 F. 2d 53 (9th Cir. 1930) and A 4-663-283; *U. S. ex rel. Fortmueller v. Commr.*, 14 F. Supp. 484 (S. D. N. Y. 1936); *Emil Gardos*, IV I. J. A. Bull. 5, p. 2 (1935) and 11, p. 2 (1936); *Sol Goldband*, IV I. J. A. Bull. 4, pp. 1, 6-8 (1933); *Greco v. Haff*, 63 F. 2d 863 (9th Cir. 1933); *Arthur Hertz*, V I. J. A. Bull. 4, p. 37 (1936); *Kenmotsu v. Nagle*, 44 F. 2d 953 (9th Cir. 1931), *cert. den.* 283 U. S. 832; *U. S. ex rel. Kettunen v. Reimer*, 79 F. 2d 315 (2d Cir. 1935); *Kjar v. Doak*, 61 F. 2d 566 (7th Cir. 1933); *LaGrassa*, IV I. J. A. Bull. 4, pp. 1, 6; *U. S. ex rel. Mannisto v. Reimer*, 77 F. 2d 1021 (2d Cir. 1935), *cert. den.* 296 U. S. 600; *Alfred Miller*, IV I. J. A. Bull. 11, p. 2 (1936); *Alexander Mills*, I I. J.

¹ A-numbers are Immigration and Naturalization Service Central Office file numbers.

² The five deportees thus noted were not deported in this period, but were re-arrested for deportation in the third period studied, 1944-1952, and are included in the 219 cases discussed there, except for Mrs. Petroskey, who was re-arrested in 1953.

of Immigration Appeals in the *Harisiades* case where it was attempted, (and also in the B.I.A. decision in the second *Bridges* case). (4) If the prohibition against bills of attainder applied to deportation proceedings, all of the cases would have to be re-heard and facts presented to prove the proscribed character of the Communist Party at the time of the individual deportees' membership, and it might not be possible to prove this as to membership in the 1930's within the *DeJonge* and *Herndon* decisions of the Supreme Court.

A. Bull. 3, p. 1 (1932); *Murdoch v. Clark*, 53 F. 2d 155 (1st Cir. 1931); *Nathan Newman*, II I. J. A. Bull. 10, p. 4; *Nishimura*, I I. J. A. Bull. 3, p. 1; *U. S. ex rel. Ohm v. Perkins*, 79 F. 2d 533 (2d Cir. 1935); *Ex parte Panagopolous*, 3 F. Supp. 222 (Cal. 1933), and I I. J. A. Bull. 8, p. 1 (1932) and II I. J. A. Bull. 1, p. 2 (1933); *Perlich*, I I. J. A. Bull. 2, p. 1 (1932); *Stella Petroskey*,² IV I. J. A. Bull. 4, p. 7 and IV I. J. A. Bull. 5, pp. 2-3 (1935); *U. S. ex rel. Popoff v. Reimer*, 79 F. 2d 513 (2d Cir. 1935); *Lorenzo Puentes and Wilfredo Puentes*, V I. J. A. Bull. 7, p. 73 (1937); *Otto Richter*, IV I. J. A. Bull. 4, p. 8 (1935) and V I. J. A. Bull. 5, p. 53 (1936); *In re Saderquist*, 11 F. Supp. 525 (D. Me. S. D. 1935), *aff'd sub nom. Sorquist v. Ward*, 83 F. 2d 890; *Otto Sahkanen*, IV I. J. A. Bull. 4, p. 6 (1935); *Saksagansky v. Weedon*, 53 F. 2d 13 (9th Cir. 1931); *U. S. ex rel. Sallitto v. Commr.* 85 F. 2d 1021 (2d Cir. 1936) and VI I. J. A. Bull. 101 (1938); *Jack Schneider*,² II I. J. A. Bull. 10, p. 4 (1934), IV I. J. A. Bull. 4, pp. 7-8 (1935); *Joseph Scovio*, I I. J. A. Bull. 6, p. 1 (1932); *Sormunen v. Nagle*, 59 F. 2d 398 (9th Cir. 1932); *Kessler v. Strecker*,² 95 F. 2d 976 (5th Cir. 1938), 307 U. S. 22 (1939); *Joseph Szak and Norman Tallentire*, II I. J. A. Bull. 11, p. 4 (1934); *Ujich v. Commr.*, 75 F. 2d 1022 (2d Cir. 1935), *cert. den.* 295 U. S. 746 (1935); *ex parte Vilarino*, 50 F. 2d 582 (9th Cir. 1931); *Jack Warnick*, IV I. J. A. Bull. 11a, p. 3 (1936); *Werrmann v. Perkins*, 79 F. 2d 467 (6th Cir. 1935); *Wolck v. Weedon*, 58 F. 2d 928 (9th Cir. 1932); *U. S. ex rel. Yokinen v. Commr.*, 57 F. 2d 707 (2d Cir. 1932).

APPENDIX C

Sources of Material on 219 Political Deportation Cases: 1944-1952

The citation is given without the name of the case when the non-citizen was involved in the case but his name does not appear in the title.

A—numbers are Immigration and Naturalization Service Central Office file numbers.

*—indicates information concerning name of non-citizen, bail or detention status, from Immigration Service list prepared for the U. S. Supreme Court, Dec., 1951¹

1. After hearing argument on the question of denial of bail in the *Carlson and Zydok* cases (*Carlson et al. v. Landon* and *Butterfield v. Zydok*, 342 U. S. 524 (1952)), Mr. Justice Frankfurter requested the Immigration and Naturalization Service to prepare a list of pending cases involving subversive charges, showing the bail or detention status of the deportees prior to the passage of the Internal Security Act of 1950, and thereafter. These lists are contained in Supplemental Memorandum for the Respondent in #35 and for the Petitioner in #136, October Term, 1951, pp. 6-17, dated Decem-

Information received directly from attorneys for deportees is listed by name of attorney and city.

°—indicates information from attorneys for deportees contained in the files of *The Lamp*.²

The list is given in alphabetical order by surname of the deportee. Only one spelling is given for each name, except where an alias was used which was totally dissimilar. Only those cases are cited in which the facts about the non-citizen were stated in the pleadings or opinions, and no attempt was made to cite every deportation case in which the 219 non-citizens appeared. An effort has been made to include all pertinent information as of June, 1954.

Isaac Abraham;° *Casimiro Absolar**°; *Andrulis** v. *Jordan*, (unrep.) (Civ. #1509, N. D. Ill. E. Div., Oct. 30, 1950) (Campbell, J.); *Toma Babin*;° *Alex Ealint*, S. Handelman, Esq., Cleveland; *David Balint*, A 4-563-545; *Bertha Barker*,* A 2-845-312; *James Barker*,* A 2-845-311; *Luisa Moreno Bemis*, King & Ginger, *The McCarran Act and the Immigration Laws*, XI Law. Guild Rev. 128, 129 note 8 (1951); *Norman Bernick*;° *Harry Bersin*, the late C. King, Esq., New York City; *Charles Bidien*;° *William Bigelow*;° *U. S. ex rel. Bittelman** v. *District Director*, 99 F. Supp. 306 (1951), and 94 F. Supp. 157 (1950),³ (both S. D.

ber, 1951 (and see note 31, p. 55 in the majority opinion of Mr. Justice Reed.) They contain somewhat more than 292 cases. (For the purposes of this article, cases were omitted in which the Service had not apprehended the individual or in which the deportee was serving time on a criminal charge throughout the period studied.)

Of the 292 cases there reported, 144 are contained in the 219 cases studied for the third period discussed in this article. The difference in number of cases is due to several factors: 1) the writers included cases which had started after 1944 and had been concluded before 1951; 2) the writers included material on the cases studied up to April, 1953 as to detention or bail status; 3) the Service included a number of cases which arose late in 1951 on which the writers did not have enough information to warrant their inclusion; 4) the Service obviously omitted several cases then pending, including the cases of *Peter Harisiades* and *Refugio Martinez*, which were heard by the Supreme Court in the 1951 and 1952 terms, respectively; 5) the Service obviously omitted a number of re-arrests which took place in August, 1951 when the Service required new bail from those deportees who had originally posted bail put up by the Civil Rights Congress Bail Fund. That the 219 cases are not atypical as to bail or detention status can be seen by comparing the figures on these points in Tables 14, 15 and 16. The writers have no reason to believe that the 219 cases are atypical in other respects.

2. *The Lamp* is the publication of the American Committee for Protection of the Foreign Born, which has appeared monthly or semi-monthly since 1944. It contains information on various types of immigration cases, including political deportation cases. The information is obtained from attorneys for the deportees. The material was found to be accurate when checked against other sources, such as pleadings and judicial opinions and the list as to bail and detention status described in note 1.

3. For a complete list of the non-citizens re-arrested in October, 1950 (including those whose names were not listed in the titles of cases), see King and Ginger, *The McCarran Act and the Immigration Laws*, XI Law. Guild Rev. 128, 129, notes 7, 8 and 10.

N. Y.); *Julius Blichfeldt*; *° *Francesco G. Bonetti*,* A 1-273-106; *U. S. ex rel. Boric* * v. *Marshall*, 4 F. Supp. 965 (D. Pa.); (67 F. 2d 1020, 290 U. S. 623 and 709) (1935); *Joseph Boross*,* A 4-496-104; *Alec C. Burleigh*; *° *Willy Busch*,* 94 F. Supp. 157 (S. D. N. Y. 1950); *Triphon Buzeff*; ° *Pedro Cabornay*; *° *Leon Callow* (Nicoloff),* J. Land, Esq., Cleveland; *Constancio Cargado*; *° *Harry Carlisle*,* 187 F. 2d 991 (9th Cir.), 342 U. S. (1952); *Carlson* * et al. v. *Landon*, 187 F. 2d 991 (9th Cir.), 342 U. S. 524 (1952), (a/k/a Solomon Skolnick); *U. S. ex rel. Cattonar v. District Director* (unrep.) (Civ. #69-129, S. D. N. Y., Aug. 31, 1951) (Sugarman, J.), and 94 F. Supp. 157 (S. D. N. Y. 1950); *Krishna Chandra*,* I. Englander, Esq., New York City; *U. S. ex rel. Charasch v. Dist. Dir.* (unrep.) (Civ. #24-275, S. D. N. Y., 1944) and Central Office #56150/550; *Paul Cinat*,* A 4-368-234, N. Y. Times Aug. 4, 1951; ⁴ *Paul Cline*, A 5-828-446; *Coleman* * v. *McGrath*, 342 U. S. 580 (1952); *Francisco E. Corona*,* A 5-487-776; *Ada V. Crewe*,* the late C. King, Esq., New York City; *John B. Crewe*,* the late C. King, Esq., New York City; *James Cryan*,* ° *Justo Cruz-Solorio*,* A 3-577-045; *Armando L. Davila*; ° *Anna Deikus*; ° *John Descovich*; ° *Albert J. Des Rosiers*; *° *Juan Diaz*, A 5-034-841; *Robert E. Dickhoff*,* A 5-156-681, B. I. A. opinion Nov. 17, 1949; *U. S. ex rel. Di Dente v. Ault*, 101 F. Supp. 496 (N. D. Ohio, E. Div. 1952); *Kondo Dimitroff*; ° *Sarah Disend*; *° *Jaroslav Dmytryk*,* A 5-042-291; *Andrzej Dmytryshyn*,* A 5-390-614, and 94 F. Supp. 157 (S. D. N. Y. 1950); *U. S. ex rel. Doyle* * v. *Dist. Dir.*, 169 F. 2d 753 (2d Cir. 1948) and 112 F. Supp. 143 (S. D. N. Y. 1953); *Dumas* * v. *Hanscom* (unrep.) (#334 h/c, S. D. W. Va., Oct. 31, 1952) (Moore, J.); *Socrates Economides*; ° *U. S. ex rel. Gerhardt Eisler v. Dist. Dir.*, 76 F. Supp. 737 (S. D. N. Y. 1948), and *Eisler v. Clark*, 77 F. Supp. 610 (D. C. D. C. 1948) (see *Potash et al. v. Clark*, cert. den. 338 U. S. 879 and 199 F. 2d 166 (D. C. Cir. 1952)); *Hans Eisler*, A 7-501-031, N. Y. Times Feb. 22, 1948, p. X-7; *Hilde Eisler*, the late C. King, Esq., New York City; *Rushdi Emin*,* A 3-865-062, N. Y. Times Aug. 4, 1951; *Per Eriksson*; ° *Agustin Esparza*,* A 3-577-048; *Elias v. Espinoza*,* A 5-489-955; *In re Estrada* * (unrep.) (Civ. #4125, N. D. Tex., Dallas Div., Oct. 28, 1950) (Atwell, J.); *Ruth Fabian*; ° *Ex parte Fierstein*,* 41 F. 2d 53 (9th Cir. 1930), and A 4-663-283; *U. S. ex rel. Eulalia Figuerido* * v. *Dist. Dir.*, 202 F. 2d 958 (2d Cir. 1953) and A 4-072-502; *Jean J. Fougereuses*; *° *In re Fox* * (unrep.) (#30115, N. D. Cal., S. Div., Oct. 26, 1950) (Roche, J.); *Blanche Fradkin*; *° *Julius Fritz*, A 3-430-058; *Anna Ganley*,* A 5-038-040,

N. Y. Times Aug. 4, 1951; *Betty Gannett*,* 94 F. Supp. 157 (S. D. N. Y. 1950); *Genaro Garcia*; ° *Mike B. Garph*; ° *William Gava*,* A 4-157-721; *Bessie Geiser*,* A 5-581-560 (HF); *Harry Goldstin*; *° *Ida Gottesman*,* N. Y. 2270-449825; *Charles G. Grant*; ° *John Greenberg*; *° *Aaron Grosberg*,* 29270/867 (1930's #) and B. Freedman, Esq., New York City; *Gzslaw Grzelak*; ° *Carolina Halverson*; *° *Harisiades v. Shaughnessy*, 90 F. Supp. 431, 187 F. 2d 137, 342 U. S. 580 (1952), A 5-300-756; *Heikkila* * v. *Barber*, F. Supp. _____, 73 S. Ct. 603 (1953); *U. S. ex rel. Heikkinen v. Gordon*, 190 F. 2d 16 (8th Cir. 1951); *Frank Hellman*; *° *Sol Hertz*,* N. Y. Times Aug. 4, 1951; *Matter of Hilty* * (unrep.) (#5153, E. D. Wis., Nov. 17, 1950) (Tehan, J.); *Teresa Horvath*; *° *Katherine M. Hyndman*; *° *David Hyun*,* 187 F. 2d 991 (9th Cir.), 342 U. S. 524 (1952); *Monica Itryna*, A 4-858-017; *Cecil Jay*; *° *Beatrice S. Johnson*, A 4-691-768, N. Y. Times Sep. 9, 1948 (14:5); *Gustav Johnson*, A 4-740-059; *Claudia Jones* * *Scholnick v. Clark*, 81 F. Supp. 298 (D. C. 1949), and 94 F. Supp. 157 (S. D. N. Y. 1950); *U. S. v. Karasek* (no decision to date) (Crim. #1-161, S. D. Ia., Cent. Div.); *Wasyk Kardasz*; *° *Keller v. Jordan* (unrep.) (Civ. #1509, N. D. Ill., E. Div., Oct. 30, 1950) (Campbell J.); *In re Kemenovich* * (unrep.) (#9179, W. D. Pa., Nov. 1, 1950) (Burns, J.); *Diamond Kim*; ° *Klig* * v. *Watkins*, 84 F. Supp. 486 (S. D. N. Y. 1949); and *Klig et al. v. Shaughnessy*, 94 F. Supp. 157 (S. D. N. Y. 1950); *Alex Knaisky*; ° *Joseph Knerly*,* A 4-090-098; *Charles Kohler*; *° *Richard Kohler*; ° *Marko Kosta*,* A 5-394-076 and N. Y. Times Aug. 4, 1951; *Julian Krasowski*,* N. Y. Times Aug. 3, 1951; *Charles Kratochvil*,* A 4-582-117; *Marie Kratochvil*; ° *Maria Kristalsky*,* A 5-376-672; *William Kruchay*,* A 5-227-469; *Kushnir v. Jordan* (unrep.) (#50 C 1528, N. D. Ill., E. Div., Nov. 10, 1950) (La Buy J.); *Herman Lansburg*, A 5-009-851; *Latra* * v. *Nicolls*, 106 F. Supp. 658 (Mass. 1952); *Petros Lezos*, LA 1600-00926; *Lichota* * v. *Jordan* (unrep.) (#50 C 1528, N. D. Ill., E. Div., Nov. 10, 1950) (La Buy, J.), A 5-439-032; *Dora Lipshitz*; ° *Josef Lubej*,* A 4-095-766; *Lukas* * v. *Ault* (unrep.) (#27806, N. D. Ohio, E. Div., Nov. 20, 1950) (Freed, J.), A 3-382-868; *Jurij Lukman*; *° *Hamish Mackay*; *° *Mackay* * v. *Butterfield* (unrep.) (Civ. #1220, N. D. Ind., Nov. 17, 1950) (Swygert, J.); *Mangaoang* * v. *Boyd*, 186 F. 2d 191 (9th Cir., 1950) and *Mangaoang v. Boyd* (not yet rep.) (9th Cir., June 17, 1953); *Martinez v. Neelly*, 197 F. 2d 462 (7th Cir., 1952), 73 S. Ct. 39 (Memo. 1953), A 3-407-165; *Mascitti* * v. *McGrath*, 342 U. S. 580 (1952); *John Mastrondea*,* N. Y. Times Aug. 4, 1951; *In re Mensalvas*,* (unrep.) (no number, N. D. Cal., S. Div., Oct. 26, 1950)

4. For a discussion of the re-arrests of non-citizens in August, 1951, see *ibid.*, 133, notes 42 to 45a.

(Roche, J.); *Samsen Milgrom*,* A 5-738-734; *Ida Miller*,* A 5-321-836; *Jacob Miller*,* SF:1300-114146; *U. S. v. Minasian*,* (not yet tried) (indictments #22088 and 22026 C. D., S. D. Cal.); *Martin Misir*,° *Joseph Modotti*, LA:16541-2136; *Ed Murk*, B. Freedman, Esq., New York City; *Ivan Nabeshka*,* A 1-405-091; *Peter Nelson*,° *Rose Nelson* (Lightcap),* A 4-942-707, 94 F. Supp. 157 (S. D. N. Y. 1950); *Carl R. Newstrom*,*° *U. S. ex rel. Nukk v. Esperdy*, 108 F. Supp. 640 (S. D. N. Y. 1952); *Michael Obermeier*,* A 4-690-122; *Andrew Overgaard*,° *Angelo Pagotto*,*° *Carl Paivio*,* 94 F. Supp. 157 (S. D. N. Y. 1950); *Peter Paliaga*,° *Antonio Papadimitrou*,*° *Papandreau** v. *Butterfield* (unrep.) (#9908, E. D. Mich., S. Div., Nov. 6, 1950) (Lederle, J.) and *In the Matter of Papandreau* (unrep.) (#10798, E. D. Mich., S. Div., Aug. 7, 1951) (Levin, J.); *Stefano Petrola*,*° *U. S. ex rel. Pirinsky v. Shaughnessy*, 177 F. 2d 708 (2d Cir. 1949) (70 S. Ct. 232); *Podolski v. Baird*, 94 F. Supp. 294 (E. D. Mich. 1950); *Nick Poleschuk*,* A 3-282-099; *Michael Popescu*, A 4-822-072; *Blaga Poprovska*,* A 3-482-220; *U. S. ex rel. Potash** v. *Dist. Dir.*, 169 F. 2d 747 (2d Cir. 1948), and *Potash et al. v. Clark*, 77 F. Supp. 610 (D. C. 1948) (cert. denied 338 U. S. 879, and 199 F. 2d 166 (D. C. Cir. 1952)); *Annie Powers*,* A 3-284-774; *In the Matter of Price* (unrep.) (#10795, E. D. Mich., S. Div., Aug. 7, 1951) (Lederle, J.), A 8-139-905; *Jose Prudencio*,*° *Sergius Prus*,*° *Leon Prusekas*,° *Mike Puchacz*,*° *Quattrone** v. *Nicolls* (not yet rep.) (#53-4 SMC, D. C. Mass.) (cert. denied 74 S. Ct. (1954)); *George Raddtorich*,*° *Jose Raymundo*,° *Resnikoff** v. *Jordan* (unrep.) (Civ. #1509, N. D. Ill., E. Div., Oct. 30, 1950) (Campbell, J.); *Abraham Roast*,*° *Victor Romond*,* D. Twitchell, Esq., Cleveland; *Ida Rothstein*, A 4-564-948; *Charles Rowaldt*,*° *Morris Rubin*,*° *Rachel Rubin*,* A 7-210-178; *Fritz Rust*,* A 4-855-375; *Michael Salerno*, A 5-651-001; *Matter of Benny Saltzman** (unrep.) (Cit. Pet. #2270-387387, S. D. N. Y., May 22, 1944) (Bright, J.), and the late C. King, Esq., New York City; *John Santo*, C. O. #56090/143; *Sassieff** v. *Boyd*, 186 F. 2d 191 (9th Cir. 1950); *Esther Sazer*,* A 5-958-673; *Schlossberg** v. *Ault* (unrep.) (#27805, N. D. Ohio, E. Div., Nov. 20, 1950) (Freed, J.); *U. S. ex rel. Schneider v. Esperdy*, 108 F. Supp. 640 (S. D. N. Y. 1952); *ex parte Sentner*,* 94 F. Supp. 77 (S. D. Mo. 1950); *Peter Shikas*,° *Humberto Sillex*,° *Joseph Siminoff*,° *George Siskind*, 94 F. Supp. 157 (S. D. N. Y. 1950); *Otto Skog*,* A 4-519-994, and opinion of Board of Immigration Appeals, Jan. 5, 1952; *Ferdinand C. Smith*, 77 F. Supp. 610 (D. C. 1948) (cert. denied 338 U. S. 879, and 199 F. 2d 166 (D. C. Cir. 1952)); *U. S. v. Spector*, 99 F. Supp. 778, 343 U. S.

169 (1952) and CO #55648/805; *Andrew Spehar*,*° *Jacob Stachel*,* N. Y. Times Sep. 9, 1948 (14:5); *John L. Stenson*,*° *Matter of Stess*,* (unrep.) (#5154, E. D. Wis., Nov. 17, 1950) (Tehan, J.); *Alexander Stevens*, A3-404-243 and N. Y. Times Sep. 1, 2, 3, 1948; *Miriam Stevenson*,* 187 F. 2d 991 (9th Cir.), 342 U. S. 524 (1952); *Kessler v. Strecker*,* 95 F. 2d 976, 307 U. S. 22 (1939); *Ardullio Susi*,° *Theresa Szerdi*,* A 2-825-198; *Anna Taffler*,* A 5-655-384; *Morris Taft*,* A 4-474-547; *Ramon Tancio*,*° *Steve Tandaric*,° *U. S. ex rel. Tarazona v. Dist. Dir.* (unrep.) (Civ. #6919, S. D. N. Y. Aug. 16, 1951) (Weinfeld, J.), and 94 F. Supp. 157 (S. D. N. Y. 1950); *Demetry Timoshuk*,*° *Peter Tkachuk*, A4-325-513; *Ponce Torres*,*° *John Tuhy*,° *Paul Val-lon*,° *George Vasiloff*,* S. Handelman, Esq., Cleveland; *Giovanne Vidolin*,* A 4-905-546; *John Voich*,° *Warhol** v. *Shrode*, 94 F. Supp. 229 (D. Minn. 1950); *Joe Weber*,*° *Application of William Weber*,* 94 F. Supp. 376 (S. D. N. Y. 1950) and N. Y. Times Sep. 9, 1948 (14:5); *William Weiner*, N. Y. Times Sep. 9, 1948 (14:5); *U. S. ex rel. Williamson v. Dist. Dir.*, 76 F. Supp. 739 (S. D. N. Y. 1948); *Hazel Wolfe*,*° *In re Yanish** (unrep.) (#30114, N. D. Cal., S. Div., Oct. 26, 1950) (Roche, J.), and *Yanish v. Phelan*, 86 F. Supp. 461 (N. D. Cal., S. Div. 1949), and *Yanish v. Barber*, 73 S. Ct. 1105 (1953); *U. S. ex rel. Yaris v. Esperdy*, 108 F. Supp. 735 (S. D. N. Y. 1952), and *U. S. ex rel. Yaris v. Dist. Dir.*, 112 F. Supp. 143 (S. D. N. Y. 1953), and *U. S. ex rel. Yaris v. Esperdy*, 202 F. 2d 109 (2d Cir. 1953); *Arsin Yergonian*,* A 2-797-594-BP-C; *U. S. ex rel. Young v. Shaughnessy*, 194 F. 2d 474 (2d Cir. 1952); *U. S. ex rel. Yudit v. Esperdy*, 108 F. Supp. 640 (S. D. N. Y. 1952); *George Zallas*,° *William Zazuliak*, A 4-087-800; *Zydok** v. *Butterfield*, 187 F. 2d 802 (6th Cir. 1951), 342 U. S. 524 (1952), and A 5-096-547.

APPENDIX D

**Aliens Deported from the United States, by Cause,
Fiscal Years 1908 to 1951 ***

1948.....	3
1949.....	4
1950.....	6
1951.....	18

Period	Cause: "anarchists and kindred classes" **
1908 to 1951.....	1,283
1908 to 1910.....	0
1911 to 1920.....	353
1911 to 1917.....	0
1918.....	2
1919.....	37
1920.....	314
1921 to 1930.....	642
1921.....	446
1922.....	64
1923.....	13
1924.....	81
1925.....	22
1926.....	4
1927.....	9
1928.....	1
1929.....	1
1930.....	1
1931 to 1940.....	253
1931.....	18
1932.....	51
1933.....	74
1934.....	20
1935.....	17
1936.....	47
1937.....	17
1938.....	8
1939.....	1
1940.....	0
1941 to 1950.....	17
1941.....	0
1942.....	1
1943.....	0
1944.....	0
1945.....	0
1946.....	0
1947.....	3

* The figures for 1908 through 1948 were abstracted from Table 5 (pp. 873-4) and Table 7 (pp. 877-9), Senate Report 1515, 81st Cong., 2d Session, The Immigration and Naturalization Systems of the United States; Report of the Committee on the Judiciary pursuant to S. Res. 137 (80th Cong., 1st Sess., as amended). A resolution to make an investigation of the Immigration System. April 20, 1950, G.P.O. Washington, D. C.

The figures for 1949, 1950 and 1951 were taken from the Immigration and Naturalization Service, Annual Report for 1951, p. 61.

The Senate Report indicated that no deportation statistics by cause are available prior to the fiscal year 1908.

** Abbreviation for political deportation cases within Act of October 16, 1918, as amended.